**8. According to NOCGSA, Mr. Goehring lied when he stated, in his direct testimony, that he had not "worked" with La Star's consulting engineer, Mr. Biby, on the La Star project. NOCGSA Proposed Conclusion No. 191.**

Mr. Goehring's normal duties involve engineering, and when he testified that he had done no "work" he meant that he had done no **engineering** work; he testified fully as to the **administrative** functions he had performed, including review of Mr. Biby's bills (Tr. 1485; Tr. 1487-1488). No USCC employee performed any "engineering" work for La Star. Tr. 1506.[11]

**9. According to NOCGSA, Mr. Krohse (a USCC employee) lied when he said "I . . . forwarded a request from SJI Cellular, Inc., to Telephone and Data Systems, Inc to prepare tax returns" because Mr. Krohse only spoke to Mr. Crenshaw's secretary, and had no other, higher level, SJI contact on La Star tax matters. NOCGSA Proposed Conclusion No. 193.**

NOCGSA does not suggest that Mr. Crenshaw's secretary was not acting for her employer, and she obviously was. Mr. Crenshaw testified that he had asked her to send a message to USCC, which she did. Mr. Crenshaw also testified that he had asked USCC to take care of tax matters for La Star. Tr. 1177. Mr. Krohse's testimony was straightforward and truthful.

**10. NOCGSA also complains that Mr. Krohse's testimony was brief, in relation to the amount of work he did on La Star's behalf,**

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[11] One of Mr. Goehring's subordinates, Mr. Gilliland, may have received some cell site documentation from Mr. Biby; Mr. Goehring was not aware of that (Tr. 1498), and it should be clear that the passive receipt of such materials does not constitute "work."

**and that it was therefore untruthful. NOCGSA Proposed Conclusions No. 193 - 194.**

In fact, Mr. Krohse's work on La Star's behalf **was** of minor significance; he did no more than he was requested to do by La Star's attorney, Mr. Belendiuk (Tr. 1368) or, in the case of tax returns, by Mr. Crenshaw. Tr. 1244. Moreover, each of the specific items listed by NOCGSA as work performed by Mr. Krohse is covered in Mr. Krohse's direct testimony (La Star Exhibit No. 18), with two exceptions:

- His involvement as one sponsor of La Star Exhibit No. 10. This involvement was hardly concealed, as it is apparent on the face of La Star Exhibit No. 10; and

- He kept his superiors at USCC generally advised of what he had been asked to do for La Star. It hardly seems surprising that an employee kept his supervisors informed of work he performed. Additionally, Mr. Krohse's update of his supervisors about work he performed does not seem sufficiently important that its omission from his direct testimony can be characterized as less than candid.

**11. NOCGSA complains that Mr. Krohse said in his direct testimony that "any work I performed [for La Star] was approved by La Star's attorney or SJI Cellular, Inc." and that he therefore lied, because he never communicated directly with SJI (NOCGSA Proposed Conclusion No. 195).**

Strangely, in the very same paragraph, NOCGSA acknowledges that Mr. Krohse **did** communicate with SJI, about tax matters. Moreover, the record amply demonstrates that Mr. Krohse clearly believed that the work he performed for La Star was approved by La Star's attorney or SJI.[12]

NOCGSA's overblown rhetoric and distortions of statements taken out of context notwithstanding, the USCC witnesses freely and fully acknowledged all of the actions which USCC took on behalf of Star for La Star.[13] USCC considered those actions to be routine and ministerial steps taken to support the application at the request of the controlling party, SJI, acting through La Star's

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[12] While NOCGSA did not contend in its Proposed Findings or in its Contingent Exceptions that Mr. Krohse had lied in La Star Exhibit No. 10, which stated that La Star's proposed rates were "cost-based," it has subsequently alleged that he did lie there, in a July 27, 1992 request for an order to show cause why USCC should not be ordered to cease and desist and divest its limited partnership interest in the Baton Rouge MSA Limited Partnership, p. 30. However, Mr. Krohse was neither shown, nor asked any questions at the hearing about, La Star Exhibit No. 10; he was instead asked about working papers Mr. Belendiuk had asked him to review in 1987, and on which he had made some handwritten suggestions based on industry pricing at the time. Tr. 1552 - 1554. Mr. Krohse was not asked to explain in what sense the La Star proposed rates set forth in La Star Exhibit No. 10 were stated in that exhibit to be "cost based," or even to state his understanding of the term.

[13] In fact, USCC filed a Motion to Strike certain of NOCGSA's more blatantly untruthful proposed findings, such as that USCC selected Mr. Belendiuk as La Star's attorney, as stated in NOCGSA Proposed Finding No. 72; and that USCC hired and terminated La Star agents, including its two counsel and its engineering and demographic consultants, as stated in NOCGSA Proposed Conclusion No. 237. NOCGSA opposed USCC's Motion to Strike, but submitted an Erratum on these points, effectively admitting that it had been wrong. Given the false proposed findings submitted by NOCGSA, there appears only to be a basis for determining that NOCGSA lacked candor.

counsel and through the delegation of the expense paying responsibility to Star in the Joint Venture Agreement. USCC and its witnesses did not consider those actions to constitute anything resembling direction or the exercise of control over the affairs of La Star.

The Commission interpreted these same actions differently than had USCC, proceeding on the theory that USCC had converted La Star's counsel into its own by paying La Star's legal expenses and by doing without question everything he requested USCC to do for La Star. USCC, however, paid La Star's legal expenses because of Star's obligation under the Joint Venture Agreement, written four years before USCC had acquired its indirect interest in La Star. Moreover, La Star's counsel had himself been hired four years before USCC became involved in the La Star venture. These different interpretations of the facts in the record -- including USCC's view that Mr. Belendiuk was not its counsel[14] -- do not mean that USCC was "lacking in candor" by taking the position that it had not assumed control of USCC. It is well established that mere differences in the legal conclusions -- here respecting whether USCC was "in control" -- drawn from record facts do not warrant a conclusion that there has been misrepresentation or lack of candor. See, *e.g., Royce Int'l Broadcasting,* 66 RR 2d 1746 (Rev. Bd. 1989); *Valley Broadcasting Co.*, 66 RR 2d 600 (Rev. Bd. 1989). Whatever the outcome

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[14] When USCC witnesses testified in depositions and at the hearing, they were represented by one of undersigned counsel, not by Mr. Belendiuk. Similarly, when USCC was ultimately granted the right to intervene, it was represented by one of undersigned counsel, not Mr. Belendiuk.

may ultimately be of the *La Star* proceeding, the findings and conclusions there, as well as the record, do not contain any indication that USCC representatives made misrepresentations or lacked candor.

Given the absence of adverse candor or other character qualifications findings and conclusions in *La Star*, the Commission's decision to dismiss as moot NOCGSA's exceptions related to such matters, and the facts of record set out above, the *La Star* proceedings may not validly serve as a basis for the specification of candor or other character issues against USCC in subsequent proceedings. The Commission, in its *La Star Decision*, neither articulates any basis in the record for concerns over USCC's candor or other character qualifications, nor even states that it had such concerns. As shown above, the record provides no basis at all for such concerns. At most, the record shows that USCC and the Commission are in disagreement over the legal significance of the facts on which the Commission based its decision that USCC "controlled" La Star. By maintaining that it was not in control, USCC was no more lacking in candor or other character qualifications than the Commission would be, in retrospect, should the Court of Appeals agree with USCC's position and disagree with the Commission's position.

### C. USCC Did Not Attempt to Take Over Control of La Star or to Circumvent the Commission's Rules.

If Footnote 3 means that the Commission's finding that USCC had *de facto* control over La Star may be revisited in other proceedings as a means of evaluating USCC's basic character qualifications or its relationships with other majority partners, there is no basis in the record for concluding that USCC intentionally took control over La Star, or that its conduct in this proceeding gives rise to any inference that it will or might act improperly in the future.

The determination in the *Initial Decision* that USCC exercised *de facto* control over La Star is, in large measure, based on findings that SJI, the majority owner, was passive and did not exercise control consonant with its majority ownership.[15] The passivity of SJI found in the *Initial Decision* and in the Commission's *Decision* did not result from anything that **USCC** did. The Presiding Administrative Law Judge did not find that SJI was less active after USCC acquired its interests in Star in August of 1987 than it had been during the four years before. Indeed, the Commission's *Decision* observes that "the record here shows a consistent pattern, both before and after 1987, of SJI's passivity in La Star's affairs in relation to Maxcell and later USCC." *Decision*, ¶27.

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[15] It is not USCC's purpose to debate those findings here; that is reserved for the appeal pending before the Court of Appeals for the District of Columbia Circuit. Instead, for the purposes of this Petition, those findings are accepted as a worst case assumption that still reveals that USCC's conduct does not reflect on its qualifications to be a Commission licensee.

The record is also clear that USCC never opposed SJI's desires or sought to wrest control away from SJI. In the *Decision*, the Commission appears to agree:

> In summary, the record fails to substantiate La Star's bald claim that SJI retained control over basic policy decisions in the prosecution of La Star's application. Rather, to all appearances, USCC controlled the applicant. In view of SJI's passivity, there is no force to La Star's argument that the record does not disclose any instances in which USCC coerced SJI. The record shows no need for coercion. The record fully supports the conclusion that La Star is not controlled by SJI, the wireline-eligible carrier, and that therefore its application should be dismissed.

*Decision, ¶40.* Whatever the implications of these words may be for La Star's wireline eligibility in St. Tammany Parish, they negate any suggestion that USCC ever rebuffed attempts by SJI to exercise the control legally vested in it by its ownership of fifty-one percent of La Star. The findings and conclusions provide no basis for any inference that USCC coerced SJI or would have rejected efforts made by SJI to govern La Star more actively, had SJI made such efforts. The findings and conclusions certainly do not support an inference that USCC made a conscious effort to control La Star or to conceal the facts from the Commission in an effort to circumvent the Commission's wireline eligibility rules. Instead, the findings and conclusions are consistent with the thesis that USCC reasonably believed, even if perhaps erroneously, that it was **not** in control of La Star.

Numerous facts in the record, and the application of partnership law, support USCC's reasonable belief that it had not assumed control of La Star. The

La Star Joint Venture Agreement was written and became effective in 1983 (La Star Exhibit No. 12, Attachment B), long before USCC first had anything to do with La Star in 1987. USCC Exhibit No. 1, p. 13. La Star's legal counsel, Arthur Belendiuk, Esq., was hired early during the 1983 - 1987 period, as were La Star's engineering consultant, Richard L. Biby, and all of the other consultants used by La Star up to the present time. La Star Exhibits 12, p. 4; 15, pp. 2-3; Tr. 992-995. No changes in those pre-existing relationships were made at or following USCC's acquisition of its interests in La Star, and none of the consultants retained by La Star were being used by USCC for any purpose at the time. La Star Exhibit No. 15, pp. 2 - 3.[16]

When USCC acquired its interests in Star in 1987, USCC accepted the four year-old terms of the Joint Venture Agreement -- including the obligation to pay La Star's expenses -- with no substantive modifications. La Star Exhibit No. 15, p. 1.[17] La Star simply was not a significant business matter to USCC, in terms of time or expense. As pointed out in USCC's only hearing exhibit, Star had other

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[16] Years later, USCC began using Mr. Biby and his firm for outside engineering work.

[17] In a February 16, 1988 Petition to Deny, NOCGSA claimed that TDS had control over La Star by virtue of supermajority provisions in the Joint Venture Agreement. USCC at that time agreed to delete the provisions if the Commission held them to be contrary to its rules or policies. Two years later, the Commission did express reservations about the supermajority provisions in the *Hearing Designation Order*, 55 FR 23592, June 11, 1990, and USCC accepted the recommendation of La Star's counsel that certain of the provisions be eliminated. USCC Exhibit No. 1, p. 17.

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- Actions which La Star requested USCC to perform, usually through La Star's attorney, Mr. Belendiuk.[18]

In the *Initial Decision*, the Presiding Administrative Law Judge frequently repeats each of the actions taken by USCC, without putting them into a context of meaningful exercises of control. For example, the *Initial Decision* mentions "site work" no fewer than eighteen times, payment of expenses no fewer than sixteen times, and "coordination" no fewer than thirteen times. It concludes that such actions, in the absence of action by SJI, constituted control by USCC. However, the *Initial Decision* does not suggest -- and the record does not show -- that USCC ever attempted to make or direct **any** policy or management decision reasonably indicative of control.[19] For example, USCC made none of the following decisions:

- The initial or subsequent composition or structure of the applicant or modify either subsequently;
- The selection or subsequent change of legal or engineering counsel or other consultants;
- Whether to file or thereafter to amend the initial application;

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[18] USCC had very little direct contact with SJI, and got most of its instructions from Mr. Belendiuk, who typically indicated that he had spoken with SJI representatives and that they had authorized whatever it was that was to be done. USCC Exhibit No. 1, pp. 14 - 17; La Star Exhibit No. 15, pp. 2 - 3.

[19] There was no reason why USCC could not properly have played a role in policy or management decisions after 1987, consistent with its minority interest. The lack of involvement by USCC personnel most likely was due, in large part, to the fact that USCC's president, Mr. Nelson, attached little significance to the La Star matter, and did not ask them to do more than USCC was asked to do. USCC Exhibit No. 1, pp. 15 - 16.

- Whether to appeal the Commission's rejection of the application;
- Whether to seek interim operating authority;
- Whether to contest the grant of interim authority to NOCGSA;
- How to proceed with the presentation of La Star's direct or rebuttal case; [20]
- Whether or how to file the numerous interlocutory motions filed by La Star; or
- Whether or how La Star should respond to the numerous interlocutory motions filed by NOCGSA.[21]

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[20] In addition to the statements of USCC personnel submitted by La Star on the wireline eligibility issue, La Star direct case Exhibit Number 10 was co-sponsored by USCC's Mr. Krohse. It was also sponsored by SJI's Mr. Brady. The numerous direct case hearing exhibits in which USCC had no involvement whatsoever include: La Star Exhibit No. 1 (Geographic Area and Population Coverage); La Star Exhibit No. 2 (Demand Study); La Star Exhibit No. 3 (Ability to Accommodate Anticipated Demand for Proposed Services); La Star Exhibit No. 4 (Proposal to Expand System Capacity in a Coordinated Manner to Meet Increasing Demand); La Star Exhibit No. 5 (Signal Strength Measurements and Observed Coverage of New Orleans CGSA, Inc.'s Existing Two-Cell System Operating under STA, Serving a Portion of St. Tammany Parish); La Star Exhibit No. 6 (St. Tammany Parish Community of Interest); La Star Exhibit No. 7 (System Compatibility); La Star Exhibit No. 8 (Inter-System Connection, Equipment Compatibility, and Switching Capabilities); La Star Exhibit No. 9 (System Management, Services and Maintenance); La Star Exhibit No. 10 (System Operation); La Star Exhibit No. 11 (Testimony of John A. Brady); La Star Exhibit No. 13 (Testimony of Sinclair H. Crenshaw); and La Star Exhibit No. 14 (Testimony of James P. Brady). Moreover, there is no suggestion in the record that USCC made or controlled any decisions respecting the nature of La Star's rebuttal case, or its presentation.

[21] While the *La Star* record is silent on the subject, La Star's attorney, Mr. Belendiuk, from time to time solicited the views of one of USCC's undersigned counsel, Koteen & Naftalin, concerning matters related to the prosecution of the La Star application. There never was any question about his discretion, as La Star's attorney, to seek, take or reject that advice. Mr. Belendiuk sometimes took their advice, and sometimes did not.

The foregoing were significant decisions that La Star, as an applicant, needed to make during the relevant licensing period.

The *Initial Decision* does discuss at length various La Star actions in which it concludes that SJI, the majority joint venturer, had not been directly involved. *Initial Decision*, ¶¶10 - 93. Assuming *arguendo* that the Presiding Administrative Law Judge and the Commission reasonably concluded that SJI's passivity, coupled with the actions of Star through Maxcell and later USCC, rendered La Star ineligible to be a wireline applicant in St. Tammany Parish, no findings or conclusions in either decision suggest that the actions taken by USCC evidence an attempt or a surreptitious intention to obtain control of La Star in contravention of the Commission's wireline eligibility rules. USCC did not cause SJI to become or remain passive, and reasonably believed that the instructions received through La Star's counsel were directed by SJI.[22] Whatever may be the consequences to the wireline eligibility of La Star in the New Orleans MSA, as to which we expressly do not here seek Commission reevaluation, USCC's good faith, its candor, and its other qualifications to be a licensee cannot reasonably be questioned. The findings and conclusions in *La Star* evidence no more than the performance of insignificant and ministerial functions by USCC in compliance with what USCC believed to be requested by the majority partner. An analysis of the *Initial Decision*, insofar as it relates to the activities of Star and USCC,

[22] Indeed, La Star's attorney typically indicated that his requests had been authorized by SJI. Tr. 1379; Tr. 1380; Tr. 1385; Tr. 1454.

supports the proposition that USCC did not knowingly or surreptitiously control La Star.

**a. USCC's Actions Concerning The 1987 Amendment and the 1988 Application for Interim Operating Authority Do Not Demonstrate an Attempt by USCC to Control La Star.**

According to the *Initial Decision*, (1) SJI did no work on the 1987 La Star amendment and USCC did basically "everything," including "site work," "budget work," and coordination with La Star's experts and consultants; (2) although USCC personnel kept each other generally advised of what they were doing for La Star, they did not coordinate with SJI, *i.e.*, all of the work was done without convening a La Star management committee meeting; and (3) the same was essentially true of the 1988 Interim Operating Authority application. *Initial Decision*, ¶¶58; 63-67; 69 - 75; 78 - 81; 219.

As noted above, the portions of the *Initial Decision* dealing with USCC mention "site work" no fewer than eighteen times and "coordination" no fewer than thirteen times. These repetitions, most of them in the context of the 1987 amendment and 1988 Interim Operating Authority application, should not be perceived as an indication that a locus of control in USCC was or should have been obvious to USCC. Instead, as demonstrated below, the insignificant and ministerial nature of the matters in which USCC **was** involved, combined with the

plethora of events in which USCC was **not** involved, could not have led USCC to believe that USCC was in control of La Star.[23]

In addition to engineering exhibits, which USCC neither prepared nor reviewed prior to filing (Tr. 1510; Tr. 1513; Tr. 1516), the 1987 La Star amendment contained the exhibits listed below. A detailed analysis of the exhibits demonstrates that USCC's involvement with the amendment made it far from obvious to USCC that control of La Star rested in anyone but SJI:

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[23] Mr. Crenshaw testified that at the initial Chicago meeting between SJI and USCC in 1987, SJI asked USCC to work under the guidance of Mr. Belendiuk to proceed with the work necessary to prosecute the application (Tr. 984), and Mr. Brady agreed with this testimony. Tr. 983 - 984. It was Mr. Crenshaw's understanding that SJI reserved the right to review all FCC filings before they were made, and to that end, Mr. Belendiuk sent to Mr. Crenshaw's attention at SJI all filings for review before they were made. Tr. 1145. Whatever authority SJI may have intended to confer upon it, USCC neither hired nor fired anyone at all for La Star. All of La Star's consultants had been hired long before USCC acquired its interests in Star in 1987, and neither USCC nor Star did anything to change La Star's relationships with them. USCC at no time took the initiative to do, or to seek to do, more than it was asked to do. USCC Exhibit No. 1, p. 14.

**Table I**

| Exhibit No. | Description |
|---|---|
| L-1 | Site Availability. This exhibit identified six cell sites and provided documentary evidence of reasonable assurance of their availability. The documents relating to availability are dated as follows:<br><br>Site 1 Letter of intent dated September 30, 1987, supported by an agreement to purchase land dated September 16, 1987.<br>Site 2 Letter of intent dated July 22, 1987 supported by an agreement to purchase land dated July 22, 1987.<br>Site 3 Letter of intent dated July 24, 1987 supported by an agreement to purchase land dated July 22, 1987.<br>Site 4 Letter of intent dated August 8, 1987 supported by an agreement to purchase land dated July 22, 1987.<br>Site 5 Undated letter of intent supported by an agreement to purchase land dated July 22, 1987.<br>Site 6 Letter of intend dated July 27, 1987 supported by an agreement to purchase land dated July 22, 1987.<br><br>With the sole exception of Site 1, all of the agreements to purchase land are dated in July of 1987, that is, prior to USCC's acquisition of interests in Star and its involvement with La Star. USCC Exhibit No. 1, p. 8. Aside from securing routine renewals of site options, USCC did not have any involvement with the preparation of this exhibit. |
| L-2 | Ownership and Communications Interests. This exhibit described the ownership of La Star, and the various interests of SJI and of USCC. It included a copy of the Joint Venture Agreement. |
| L-3 | Schedule of Proposed Charges. This exhibit set forth proposed rates, which are the same as those Mr. Krohse reviewed and suggested changes to at Mr. Belendiuk's request. Tr. 1552; see NOCGSA Reb. Exhibit No. 27. |

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|---|---|
| L-4 | Financial Qualifications. This exhibit set forth estimated costs of $4,451,100 -- $947,992 greater than Mr. Krohse had suggested. Compare NOCGSA Reb. Exhibit No. 27. It also set forth a breakdown of proposed capital costs and operating costs. The operating costs are all different from those suggested by Mr. Krohse (compare NOCGSA Reb. Exhibit No. 27) and the total operating costs set forth in the amendment are $429,300 greater than the total suggested by Mr. Krohse. The exhibit also included a pro forma budget for La Star. The reasonable assurances of funding provided by TDS are in an appendix to the exhibit. |
| L-7 | System Management. This exhibit described how La Star proposed to operate its system, with information about its proposed "management team" and operating personnel. USCC did not have any involvement in the preparation of this exhibit. |
| L-8 | Public Interest Considerations. This exhibit explained why grant of the La Star application would be in the public interest, based in part on a demographic and demand analysis. It also stated what "special features" the system would have. USCC did not have any involvement in the preparation of this exhibit. |

USCC did not make or direct the policy decision to prepare or file the amendment; SJI's Mr. Brady testified that he directed Mr. Belendiuk to have it prepared, "including updating the plots that were available for cell sites." Tr. 980.[24] SJI was responsible for updating its own ownership information. Tr. 980. The amendment was reviewed (La Star Exhibit No. 12, p. 4; Tr. 997; Tr. 1055;

[24] In an August 14, 1992 Opposition to Supplement to Petition for Reconsideration filed by Mobiletel, Inc., an SJI affiliate, it is stated that the Commission found that USCC had "supervised" preparation of the 1987 amendment, and Mobiltel accepts this finding as accurate for purposes of its argument there. Mobiletel Opposition, p. 15. In fact, however, and as shown here, USCC did not even "supervise" preparation of the 1987 amendment. That was a function performed by La Star's counsel, Mr. Belendiuk.

Tr. 1085; Tr. 1108) and signed (See 1987 La Star amendment) by Mr. Brady, and filed with the Commission by La Star's attorney, Mr. Belendiuk. There is not even a suggestion in the record that any USCC employee even saw the amendment before it was filed.

USCC had no involvement in designing La Star's system, determining the placement of cell sites, or in any of the other myriad activities typically involved in designing a cellular system. Tr. 1507. USCC also gave no direction or guidance to La Star's consulting engineer on these or other engineering matters. Tr. 1508; Tr. 1516.[25] USCC did not select or suggest even one La Star cell site (La Star Exhibit No. 16), and as shown above (Table I), all of the documentation for five of the six cell sites predates USCC's involvement with La Star. As also shown in

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[25] USCC had been asked by Mr. Belendiuk to monitor site option renewals, and that routine task was mainly done by Mr. Krohse (Tr. 1368) until after hearing designation. USCC paid for the site option renewals, as it was required to do under the Joint Venture Agreement. La Star Exhibit No. 15, pp. 1 - 5. The real estate agent was the same agent who had been used by La Star since 1983, long before USCC's involvement began in 1987. No USCC "site engineer" or other representative ever went to Louisiana to secure sites or for any other purpose relating to La Star. Tr. 1491-1492.

The decision to move the site option renewal function to Mr. Crenshaw following hearing designation presumably was made by Mr. Belendiuk in consultation with SJI. From time to time before that, Mr. Crenshaw had received site option paperwork and had sent it to Mr. Belendiuk to have USCC take care of it. Tr. 1141 - 1142. Mr. Crenshaw and Mr. Belendiuk also discussed site matters from time to time (Tr. 1224), and USCC was not trying to keep its site option renewal work secret from SJI or otherwise to insinuate itself into a position of control by doing it. It was reasonable for USCC to assume that Mr. Belendiuk was keeping SJI apprised of site matters to the extent he deemed appropriate, and it was not USCC's job to monitor his performance.

Table I above, the proposed operating budget is quite different from that suggested by USCC's Mr. Krohse. Substantial work was done by La Star's consultants, Anderson and Biby, who worked for La Star long before USCC became involved.[26] The only "engineering" work done by USCC was limited to reviewing Mr. Biby's engineering invoices based on the work done (Tr. 1485; Tr. 1487-1488)[27] and preparing a single affidavit requested by Mr. Belendiuk for use in a pleading in this case.[28] While USCC's Mr. Krohse prepared rate schedule materials for the amendment at the request of La Star's attorney, Mr. Belendiuk,

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[26] According to the *Initial Decision*, SJI principals Brady and Crenshaw were not familiar with La Star's consultants. *Initial Decision*, ¶¶63 - 67. However, USCC had no way of knowing that, and it was reasonable for USCC to assume that SJI was familiar with these consultants, because they had been employed by La Star long before USCC acquired its minority interest in La Star, and they were not consultants to USCC.

[27] As USCC's engineering vice president, Mr. Goehring was the obvious "coordinating point" within USCC for **all** engineering; however, he only "coordinated" when there was something to "coordinate." He was never asked for advice on "application filings" (Tr. 1516) and he never saw them before they were filed with the Commission. Tr. 1510 - 1516. That work was all done, independently of USCC, by La Star's engineering consultants. La Star Exhibit No. 16; Tr. 1507; Tr. 1487; Tr. 1479.

[28] The affidavit compared La Star's proposed equipment costs as set forth in Exhibit L-4 of the La Star amendment with those historically experienced by USCC, and concluded that La Star's proposed costs appeared reasonable based on Mr. Goehring's experience. La Star Exhibit No. 16. It was prepared at Mr. Belendiuk's request for his use in responding to a Petition to Deny filed by NOCGSA. USCC neither made nor directed any decision whether or how to amend the La Star application, or whether or how to oppose amendments tendered by NOCGSA. Nor is there any evidence of "coordination" between Mr. Belendiuk and Messrs Nelson, Goehring, Meyers or Krohse over whether to respond to the NOCGSA petition. USCC merely did what Mr. Belendiuk asked it to do.

preparation of the material was neither Mr. Krohse's nor USCC's idea, and they did not volunteer to prepare it.[29]

The 1988 Interim Operating Authority application contained approximately eighteen sections and exhibits. A detailed analysis of the exhibits demonstrates that USCC's involvement was not indicative of any intent to exercise control of La Star, surreptitiously or overtly. In addition to Schedule A and Schedule B associated with the FCC Form 401 Application, the Interim Operating Authority application contained fifteen separate exhibits that detailed the ownership structure of the applicant and its wireline qualifications, its proposed CGSA, its environmental showing, its other interests, its financial qualifications, its service proposal, its engineering methodology, its various technical proposals, and its FAA status. USCC had no involvement in preparing either Schedule A or Schedule B, and had no involvement in preparing twelve of the fifteen exhibits. USCC's involvement in the remaining three exhibits was limited to describing its own

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[29] Mr. Krohse's declaration, associated with La Star Exhibit 10, stated that he had also prepared that exhibit's schedule of proposed charges. However, Mr. Brady **also** sponsored Exhibit 10, and **his** associated declaration stated that he had reviewed it, that it was accurate to the best of his knowledge and belief, and that "I have reviewed the Schedule of Proposed Charges and find them to be consistent with La Star's proposed cellular system." La Star Exhibit No. 10, Brady declaration. Although Mr. Brady testified at the hearing to a lack of familiarity with the proposed rates, it was reasonable for USCC to assume that Mr. Belendiuk kept SJI apprised of events to the extent that he deemed appropriate, and that if SJI (or Mr. Belendiuk) did not like USCC's rate or other suggestions, those suggestions would be rejected or that changes would be made to them. It was also reasonable for USCC to assume that Mr. Brady read and was familiar with the documents submitted to him by Mr. Belendiuk or any other person for signature.

ownership structure and other ownership interests and demonstrating its own financial commitment to La Star and the ability of that commitment to cover La Star's costs, see Table, Appendix I.

For its part, SJI's Mr. Brady testified that he reviewed the Interim Operating Authority application in its entirety, and that he then signed it. Tr. 1109. As was the case with the La Star 1987 amendment, there is no indication in the record that any USCC employee ever saw the Interim Operating Authority application before it was filed with the Commission.

What little "work" USCC employees did was done solely because La Star's attorney, Mr. Belendiuk, had requested that Mr. Nelson have USCC do it. Tr. 1368; 1371; 1448; 1449. The fact that USCC subordinate employees generally communicated with their supervisors at USCC about what they were doing, but did not have similar direct communications with SJI, does not mean that USCC was trying to keep SJI in the dark or take over control. It was reasonable for Mr. Krohse to keep Mr. Nelson informed so that he would know what his employees were doing and so that Mr. Nelson could respond to Mr. Belendiuk. Mr. Krohse was not on La Star's management committee, as was Mr. Nelson, nor was it Mr. Krohse's job to coordinate with SJI. Further, it was reasonable for USCC to

assume that Mr. Belendiuk was following SJI's direction -- as he repeatedly said he was. Tr. 1379; 1380; 1385; 1454.[30]

USCC had no reason to believe that Mr. Belendiuk was asking it to do anything that SJI had not requested, or that Mr. Belendiuk was not apprising SJI of the actions he was performing or requesting of USCC or of La Star's consultants, Anderson and Biby.[31] Those consultants provided substantial factual input and prepared substantial portions of the filings, including information on how the system would operate and on the public interest considerations. USCC did not ask them to perform any of these tasks, and USCC did not suggest that any changes be made to what they had done.[32] It was also reasonable for USCC to assume that Mr. Belendiuk, who was in correspondence with Dr. Anderson, was keeping SJI apprised and that any direction of Dr. Anderson's work was coming from Mr.

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[30] According to SJI's Mr. Brady, SJI never contacted USCC to discuss the courses of action recommended by Mr. Belendiuk, because Mr. Brady had "full faith and confidence in [his] attorney" (Tr. 1053), who always did as Mr. Brady requested. Tr. 1054. Mr. Brady testified that he directed Mr. Belendiuk to prepare the amendment and that his review of the submissions he had asked Mr. Belendiuk to prepare confirmed this to his satisfaction. Tr. 1055.

[31] USCC did not have any authority to call a meeting of the La Star management committee (La Star Exhibit No. 12, Attachment B, ¶4.2) to discuss any of these matters, and it was reasonable for USCC to assume that if SJI wanted to have a management committee meeting, SJI would convene one. SJI itself held few if any formal Board of Directors meetings (Tr. 818) and SJI's practice was, evidently, carried over into the way that La Star functioned.

[32] Mr. Nelson talked with Dr. Anderson only once, by telephone. There is no indication that Mr. Nelson ever suggested any changes to any work that Dr. Anderson had done. Further, Mr. Nelson never spoke with La Star's real estate agent, Ms. Resweber. Tr. 1342.

Belendiuk in accordance with SJI's wishes. It was also reasonable for USCC to assume that SJI was generally familiar, and satisfied, with the work being done by La Star's other consultants, who had been consultants to La Star since the very beginning, in 1983, four years before USCC acquired any interest in La Star. Tr. 909 - 910. It was also entirely reasonable for USCC to assume, since it never heard to the contrary, that Mr. Brady was satisfied with the work it performed for La Star at Mr. Belendiuk's request.

**b. The Ministerial Bill Paying and Record Keeping Functions Performed by USCC Do Not Show that USCC Attempted to Control La Star.**

According to the *Initial Decision,* USCC paid on behalf of Star all of La Star's bills without coordination with, or copies being sent to, SJI, and accounted for La Star expenses in the same manner that it accounted for its own expenses; all of the La Star financial records were maintained by USCC personnel in Chicago, until after hearing designation, and on two occasions Mr. Brady asked Mr. Crenshaw to obtain financial information from USCC, but that information was not provided. *Initial Decision,* ¶¶59 - 62; 68; 89 -93; 219.

The 1983 Joint Venture Agreement **required** Star to pay **all** of the La Star expenses. La Star Exhibit No. 15, pp. 1 - 5. That agreement was not modified when USCC acquired its interests in Star and thereby in La Star in 1987. USCC complied with the Joint Venture Agreement it was obligated to honor. Mr. Crenshaw testified that "that is as we wanted it." Tr. 1173. The repeated listings

found in the *Initial Decision* of the things for which USCC paid does not increase whatever significance USCC's bill paying function on behalf of Star might have with respect to control of La Star. USCC did not in any way use, or attempt to use, its position as "paymaster" to direct or control any La Star activity or any activity of any La Star consultant or other agent. SJI's Mr. Brady testified, "there has not been a single instance in which Star has threatened to withhold payment in return for concessions on SJI Cellular's part." La Star Exhibit No. 12, p. 4; La Star Exhibit No. 15, p. 5.

Similarly, USCC also maintained the La Star books until mid 1990 because Star was responsible under the Joint Venture Agreement for paying La Star's expenses. There was **no** request for a formal accounting, as Mr. Crenshaw (Tr. 1218 -1219) and Mr. Brady (Tr. 975) both testified. According to Mr. Crenshaw, he once asked USCC for some financial information, and then forgot to follow up on his request. Tr. 1186. USCC, which was not a party to the proceeding at the time when Mr. Crenshaw testified, had no opportunity to question him about the request. Mr. Krohse testified that he was never asked to provide any accounting information to SJI. Tr. 1536. Mr. Nelson was not asked any questions about the matter.

General information about the level of expenses being incurred was provided to SJI through La Star's attorney and engineers (Tr. 972), and it was SJI's belief that, at the end, there would be an audit of the various expenses paid

by USCC on behalf of Star. Tr. 973. Mr. Crenshaw had discussions from time to time with Mr. Belendiuk about the amounts of the legal, engineering and other expenses that were being incurred, and the amounts seemed reasonable. Tr. 1188. It was Mr. Brady's understanding that, through May 31, 1990, USCC had paid between $350,000 and $400,000 in La Star expenses. Tr. 974.[33] Mr. Brady was not worried about the exact amount of the expenses while the proceeding was on-going, because the expenses were generally for legal and engineering fees and filing fees, and he knew generally the levels that those expenses had reached. Tr. 975. Mr. Crenshaw also testified that SJI was comfortable with the expense levels and with the work being done: "We saw the work product that was being done and really had no problem with the understanding we had." Tr. 1225.

### c. The Financial Commitment Letters Secured by TDS Do Not Establish that USCC Attempted to Control La Star.

According to the *Initial Decision,* TDS provided financial commitment letters in support of the 1987 La Sta amendment and the La Star 1988 Interim Operating Authority application and negotiated the terms of the underlying bank commitments without SJI involvement; the resulting financial amendments provided financial information about TDS but not about La Star. *Initial Decision,* ¶¶ 76 - 77.

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[33] Mr. Nelson later testified that "Since USCC acquired its minority interest in La Star, USCC has paid a total of $513,000 as its share of La Star's litigation and other expenses." (USCC Exhibit No. 1, p. 11). Hence, Mr. Brady's understanding as to the amount expended as of almost a year previously was close, if not correct.

According to Mr. Brady, he negotiated with two banks and with TDS in 1987 for La Star financing, and elected to have La Star rely on financing by TDS since "the financing package available from TDS was considerably better than that offered by Jackson Bank or First Interstate Bank." La Star Exhibit No. 12, p. 10.

TDS did not secure a bank loan commitment for La Star. Rather, it secured a bank loan commitment for **itself**, to support **its own** entirely separate 1987 commitment to La Star. That commitment is contained in an attachment to Exhibit L-4 to the 1987 La Star amendment. The bank stood ready to lend money to TDS, not to La Star, and La Star proposed to borrow money from TDS, not from the banks. The bank was relying on TDS, not La Star, for payment, and there was, therefore, no reason for the financial amendment to provide financial information about La Star rather than about TDS. Similarly, there is no reason why SJI should have been involved in negotiating the arrangements between TDS and TDS' bank. The *Initial Decision* does not suggest any reason **why** SJI should have been involved in the negotiations between TDS and TDS' banks, and no reason is apparent. For La Star to have been involved in the negotiations between TDS and TDS' banks would have made no more sense than for an individual seeking a car loan from a bank to become involved with the bank's sources of funds.

As was the case in 1987, **TDS** in 1988 obtained a loan commitment for **itself**, to support **its own** loan commitment to La Star (Copies of the loan