

- "In addition to interest in the Baton Rouge wireline cellular system, Star owned a minority (49 percent) interest in a joint venture, La Star Cellular Telephone Company. That interest, which USCC acquired incident to acquisition of the Baton Rouge interest, was (and remains) far less important than the Baton Rouge interest." (USCC Ex. 1 at 9.)

This statement makes it appear as though Star Communications was acquired primarily for the interest in Baton Rouge despite the fact that it is only a limited partnership interest and in a smaller market than New Orleans.

- "While USCC has historically been active in increasing its cellular holdings throughout the country, and would most likely consider any offer by SJI (or, for that matter, anyone else) to sell any or all of its cellular holdings at reasonable prices, we have never had any wish to usurp control of La Star." (USCC Ex. 1 at 13.)

This statement makes it appear as though USCC never controlled or intended to control La Star.

- "La Star, generally through its counsel, Mr. Belendiuk, has from time to time asked USCC for assistance in matters as to which our expertise in constructing and operating cellular systems might be useful, and we have provided assistance in response to those requests. . . . [T]o the best of my knowledge, Mr. Belendiuk has never asked us for directions or instructions." (USCC Ex. 1 at 14.)

This statement makes it appear as though Nelson was asked for assistance in La Star matters from someone other than Belendiuk. The statement also makes it appear as though USCC only took action after having first having such action requested by Belendiuk or some other La Star personnel. Finally, the statement also makes it appear as though USCC never gave instructions to Belendiuk.

- "Aside from asking USCC personnel to respond helpfully to Mr. Belendiuk's requests for assistance, I have had very little personal involvement, and I have taken very little personal interest, in the La Star matter." (USCC Ex. 1 at 15.)

This statement makes it appear as though Nelson had little involvement with or interest in La

Star.

- "I have always viewed the La Star matter as a trivial aspect of USCC's business, for which people other than USCC employees have been primarily responsible, and I have devoted only the minimal time necessary to it; I have not sought opportunities to do more." (USCC Ex 1 at 15.)

This statement makes it appear as though Nelson viewed La Star matters as trivial. It also makes it appear as though USCC was not heavily involved in La Star's affairs, but instead others were.

Finally, the statement makes it appear that Nelson devoted little time to La Star.

PETITION OF USCC TO DELETE OR NULLIFY THE EFFECT OF FOOTNOTE

THREE

On February 2, 1993, USCC filed with the Commission a Petition to Delete or Nullify the Effect of Footnote Three. Listed below are statements from the petition that the Bureau believes an issue exists as to whether USCC misrepresents facts, lacks candor, or attempts to mislead the Commission.⁵ (In some instances, USCC cites to the instances in the La Star record which the Bureau has already listed herein as posing an issue. However, because USCC again cites those instances as fact, and because USCC may be subject to a forfeiture if the material is intentionally misrepresenting facts, lacking candor, or made to mislead the Commission, they will be included in the Bill of Particulars again.)

- "Aside from asking USCC personnel to respond helpfully to Mr. Belendiuk's requests for assistance, I had very little personal involvement, and have taken very little personal interest, in the La Star matter. . . . I have always viewed the La Star matter as a

⁵ It should be noted that the Memorandum Opinion and Order and Hearing Designation Order in this proceeding (9 FCC Rcd 938 (1994)) allowed for the imposition of forfeitures if information in the Petition to Delete or Nullify the Effect of Footnote Three misrepresents facts, is lacking in candor, or attempts to mislead the Commission. See HDO at ¶¶ 37, 48.

trivial aspect of USCC's business, for which people other than USCC employees have been primarily responsible, and I have devoted only the minimal time necessary to it; I have not sought opportunities to do more." (Petition at 14-15, quoting written statement by Donald Nelson.)

- "Everything Mr. Nelson and USCC did at the request of La Star's counsel, Mr. Belendiuk, was done in the belief that Mr. Belendiuk was guided by the wishes of SJI, whose principals constituted three of the five members of the management committee and therefore, in Mr. Nelson's view, controlled it." (Petition at 15, citations omitted.)
- "At no time did Mr. Nelson (or any other USCC employee) question Mr. Belendiuk's requests or volunteer to do more; they simply did as he asked them to do." (Petition at 15.)
- "Generally, I would receive a telephone call from Mr. Belendiuk and he would advise me of a need for La Star to take some action. Most of the calls involved a proposed course of action to be taken in the La Star litigation, e.g., the need to file an appeal. I understood that he had first spoken to someone at SJI Cellular and that the course of action had already been approved by SJI Cellular." (Petition at 16, quoting written statement by Donald Nelson.)
- "Mr. Goehring was USCC's Vice President for Engineering and Operations and would have been the 'logical point to interface' with La Star's engineering consultant, Mr. Biby, had there been any need for it. There was none, however, and Mr. Goehring did not even recall having seen, much less worked on, the design of the La Star cellular system, the 1987 amendment, or the proposal for interim operation." (Petition at 20, citation omitted, emphasis in original.)
- "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. No USCC employee performed any 'engineering' work for La Star." (Petition at 21, citation and footnote omitted, emphasis in original.)
- "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, or, in the case of tax returns, by Mr. Crenshaw." (Petition at 22, citations omitted, emphasis in original.)

- "La Star simply was not a significant business matter to USCC, in terms of time or expense." (Petition at 28.)
- "After assuming obligations under the Joint Venture Agreement, USCC did not independently initiate any La Star related action; question any of the requests made of it by its majority partner, SJI, or by La Star's attorney concerning La Star; attempt to make or direct any La Star policy decision; or otherwise affirmatively seek to exercise dominion over the affairs of La Star." (Petition at 29.)
- "USCC never gave, and was never asked for, instructions on how to proceed." (Petition at 29, citations omitted.)
- "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." (Petition at 31, n.21.)
- "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." (Petition at 32, footnote omitted.)
- ". . . USCC neither prepared nor reviewed [engineering exhibits] prior to filing." (Petition at 34, citation omitted.)
- "In fact, however, . . . USCC did not even 'supervise' preparation of the 1987 amendment. That was a function performed by La Star's counsel, Mr. Belendiuk." (Petition at 36, n.24.)
- "USCC also gave no direction or guidance to La Star's consulting engineer on these or other engineering matters." (Petition at 37, citations omitted.)
- "The only 'engineering' work done by USCC was limited to reviewing Mr. Biby's engineering invoices based on the work done

and preparing a single affidavit requested Mr. Belendiuk for use in a pleading in this case." (Petition at 38, citations and footnotes omitted.)

- "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' and he never saw them before they were filed with the Commission. That work was all done, independently of USCC, by La Star's engineering consultants." (Petition at 38, n.27, citations omitted, emphasis in original.)
- "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." (Petition at 38, n.28.)
- "USCC had no involvement in preparing either Schedule A or Schedule B, and had no involvement in preparing twelve of the fifteen exhibits [of La Star's Interim Operating Authority Application]." (Petition at 39.)
- "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." (Petition at 40.)
- "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." (Petition at 40, citations omitted.)
- "Further, it was reasonable for USCC to assume the Mr. Belendiuk was following SJI's direction -- as he repeatedly said he was." (Petition at 40-41, citations and footnote omitted.)
- "There was no request for a formal accounting, as Mr. Crenshaw and Mr. Brady both testified." (Petition at 43, citations omitted, emphasis in original.)
- "Of primary importance here is the fact that, regardless of what SJI

was doing or not doing, there is no evidence in the record that USCC was 'orchestrating and overseeing' counsel's activities; there is ample evidence that USCC was not doing so and that it had no basis for any belief that it was doing so." (Petition at 49, emphasis in original.)

- "... USCC never gave [Mr. Belendiuk] any instructions, challenged his (or SJI) decisions after the fact, or questioned his bills." (Petition at 49, citation omitted.)
- "In performing acts for La Star, however, USCC was not acting on its own behalf but was either fulfilling its obligations under the Joint Venture Agreement or doing what La Star's attorney told USCC that a representative of the SJI majority on the La Star management Committee had requested." (Petition at 51.)
- "This February 19, 1988 'Application of La Star for Interim Operation Authority in the Northern Portion of the New Orleans MSA' consists of a nine page pleading signed only by La Star's attorney, Mr. Belendiuk. USCC had no involvement in its preparation." (Appendix I, p.1, entry regarding Application.)
- "Cost estimates and financial qualifications. This exhibit includes proposed capital and operating cases for the interim system. While USCC personnel appear to have had some role in suggesting costs to Mr. Belendiuk, the record does not reveal whether those suggestions were adopted, in whole or in part. La Star was, however, free to accept, reject, or modify the USCC input and proceed as it pleased in proposing a budget to the Commission." (Petition at Appendix I, p.1, entry regarding Exhibit 5.)
- "Engineering Methodology. This exhibit explains the basis for various of the engineering calculations set forth in Tables MOB-3 of the FCC Forms 401b. USCC had no involvement in its preparation." (Petition at Appendix I, p.2, entry regarding Exhibit 9.)
- "Interconnection proposal. This exhibit explains how La Star proposes to interconnect with the public switched telephone network. USCC had no involvement in its preparation." (Petition at Appendix I, p.2, entry regarding Exhibit 10.)
- "Design Concepts. This exhibit explains the proposed cellular configuration. USCC had no involvement in its preparation."

(Petition at Appendix I, p.2, entry regarding Exhibit 12.)

- "Basis for Cell Splitting. This exhibit is based on demographic analysis of the service area and describes how system loading will affect future expansion. USCC had no involvement in its preparation." (Petition at Appendix I, p.2, entry regarding Exhibit 13.)
- "These engineering materials were prepared by Mr. Biby. USCC had no involvement in its preparation." (Petition at Appendix I, p.3, entry regarding Schedules B.)

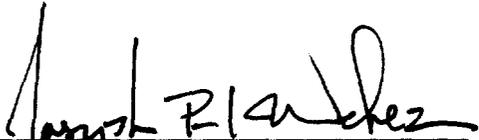
The foregoing has been prepared to give TDS and USCC the particulars of the instances in which the Bureau believes there is insufficient evidence in the La Star record to determine whether TDS misrepresented facts, lacked candor, or otherwise attempted to mislead the Commission.

Respectfully Submitted,

Regina M. Keeney
Chief, Wireless Telecommunications Bureau

January 13, 1995

By:



Joseph Paul Weber
Trial Attorney

CERTIFICATE OF SERVICE

I, Joseph Weber do hereby certify that on January 13, 1995, copies of the foregoing Bill of Particulars were served by first-class mail, U.S. Government frank, except as otherwise noted, on the following parties:

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