1 layman places, I assume those principles are not attorneys,
2 that a layman might place some reliance on the opinion of his
3 attorney or an attorney as well respected as Mr. Miller.
4 MR. WEBER: Oh, I mean, there's certainly no
5 questions that's the case.
6 JUDGE GONZALEZ: So, do you not think then perhaps
7 that there might -- there might be some significance to -- or
8 there might -- it might be some help to the record to explore
9 Mr. Miller's reasons for including the language which I assume
10 was adopted -- your argument was adopted, reviewed and
11 adopted, by the principles that we're -- that we'll be hearing
12 from in this proceeding.
13 MR. HARDMAN: Your Honor, it's -- if I may offer
14 part of an answer as well. It's -- my response is that the
15 issue is not whether Mr. Miller or so far as I know any other
16 attorney in this case prepared and submitted documents to the
17 clients for review knowing that there was something improper
18 about the documents. The question is whether the clients had
19 information, knew things that they either knew or should have
20 known that the documents submitted to them were not completely
21 truthful or contained misrepresentations. That's the essence
22 of the difference of the issues that we're talking about,
23 which I believe we agree with the Bureau on this, that makes
24 this type of testimony beside the point.
25 JUDGE GONZALEZ: What about that argument?

1 MR. EMMONS: Well, Your Honor, the point you made a
2 moment ago is exactly right, the Court of Appeals for the D.C.
3 Circuit said -- and the thing is RKOK, "In modern America
4 parties communicate with administrative agencies almost
5 exclusively through lawyers." And that's exactly right and
6 Mr. Carlson's testimony corroborates that very, very strongly
7 that he relied on Toteen and Naftalin. Mr. Weber made the
8 point that Mr. Carlson reviewed the petition to delete
9 footnote 3 before it was filed. That is true and his
10 testimony says that he didn't see anything in it that he
11 thought was inaccurate or wrong or not candid but Mr.
12 Carlson's scope of knowledge about the circumstances and
13 events are very limited. He couldn't have it -- make a
14 comprehensive judgement on everything that was in the --
15 JUDGE GONZALEZ: All right, all right, even
16 conceding that point, I think Mr. Hardman's point still is a
17 good strong one. I think -- I think there's been a concession
18 that Mr. Miller submitted these drafts or these pleading to
19 the principals in good faith. I think Mr. Hardman's argument
20 is that the principals themselves had some responsibility if
21 they knew in fact that certain statements made in those
22 documents were not correct to point that out to Mr. Miller.
23 So, I don't think Mr. Miller's good faith or expertise is at
24 issue. Apparently, if I'm correct, if I'm reading you
25 correctly, Mr. Hardman, what is at issue is whether Mr.

1 Carlson and others should have brought it to Mr. Miller's
2 attention that certain statements contained therein were
3 apparently or it is argued not correct.
4 MR. SCHNEIDER: Well, what I -- go ahead.
5 JUDGE GONZALEZ: Could so -- could not, I mean just
6 trying to sum it up, could not the document be abridged or
7 revised in such a way to make it clear that Mr. Miller reached
8 the arguments or made the arguments that he had -- that he
9 made in his pleadings in good faith after properly researching
10 the issues and leave it at that? Do we have to reargue them?
11 Do we have to reset -- set them out again?
12 MR. SCHNEIDER: Your Honor --
13 JUDGE GONZALEZ: I don't -- I mean I don't see what
14 the purpose would be.
15 MR. SCHNEIDER: I'll try and explain it because it
16 isn't quite as simple as --
17 JUDGE GONZALEZ: Because clearly Mr. Miller did not
18 go into a long legal discussion with Mr. Carlson and others
19 when he submitted his drafts.
20 MR. SCHNEIDER: In point --
21 JUDGE GONZALEZ: And even then it wouldn't really --
22 it really wouldn't respond -- it really wouldn't answer the
23 point that Mr. Hardman is making and I believe his argument as
24 I mentioned is that there were -- that perhaps the principals
25 had knowledge which they did not convey to Mr. Miller which

1 would contradict statements made in the pleadings.
2 MR. EMMONS: Well, there's a legal, but that itself
3 requires a legal conclusion almost on the part of a principal,
4 Your Honor, to -- a principal may have knowledge of a fact but
5 he is -- his attorney --
6 JUDGE GONZALEZ: Well, then he can't be faulted, can
7 he, or it's got to be a mitigating factor.
8 MR. EMMONS: But maybe, Your Honor -- but maybe,
9 Your Honor, the fact he doesn't know that that fact is
10 relevant or material to the issue. The attorneys are the ones
11 who are focusing on the issues and know what -- what is
12 relevant to an issue or a point and what isn't and the state
13 of the chairman of a -- of a major corporation in this company
14 might be able to make his own judgement about whether
15 something should have been included in a draft or the petition
16 that wasn't included by the lawyers. I just think that --
17 JUDGE GONZALEZ: Well, would that -- would that not
18 come out under his testimony -- I mean under the course of his
19 testimony. In other words what his frame of mind was when he
20 received the drafts?
21 MR. EMMONS: Well ---
22 JUDGE GONZALEZ: Wouldn't that come out through his
23 testimony -- wouldn't that be a better source than --
24 MR. EMMONS: He would certainly be subject to
25 questioning.

1 JUDGE GONZALEZ: -- having Mr. Miller go on at great
2 length about why he reached the conclusions or why he formed
3 the argument that he made in the pleadings?
4 MR. SCHNEIDER: I would like to add a few things,
5 Your Honor. The problem is, first of all, I'll make one
6 point, no argument Mr. Hardman wishes to make about whether or
7 not a principal should have told Mr. Miller something or
8 shouldn't have will be foreclosed by putting this testimony
9 in. Certainly if he wants to argue that he can do so. But
10 the issue just isn't as simple as Mr. Hardman would like to
11 have it appear. Mr. Miller isn't -- this isn't about argument
12 of law, this is an argument about the facts and why certain
13 facts were described a certain way or not a certain way and
14 Mr. Miller wasn't simply an attorney who was making legal
15 argument, the principals have testified and will testify that
16 he was an individual who was involved in trying the very case
17 in which the principals were alleged to have made
18 misrepresentations. They had certain assumptions about the
19 facts he knew, he had, for example, collected the documents,
20 been involved in the document review process, been involved in
21 producing documents for the commission. So, in their view it
22 wasn't a simple job of I am the provider of the fact, my
23 attorney knows the law. He was part and parcel of the
24 applicant that produced the testimony and stated fact and it's
25 not as simple dichotomy. Second, I mean I have the strange

1 feeling that eight -- six to eight months I'll read findings
2 that say that Mr. Carlson or Mr. Nelson's self serving
3 testimony, that they relied on counsel and that they believed
4 counsel was aware of fact -- or I mean -- I'm hypothesizing
5 here, is self serving and not credible and then we're going to
6 want to say, but, Your Honor, that could have been credited by
7 the very fact that the counsel testified that he was aware of
8 those facts and didn't believe those facts needed to be put in
9 or didn't believe the facts were as they were eventually
10 found. This is all going to be about credibility and, you
11 know, Mr. Hardman's offering up some of the arguments he's not
12 going to make but I can't see that he'll -- that all of the
13 ones he might not make -- he might make won't involve some --
14 some reliance on the fact that counsel was aware of facts,
15 that counsel felt that the statements made were true and
16 accurate as described, that the witness was aware of the fact
17 that counsel was aware of those facts, the witness was in the
18 habit of relying on counsel to present those facts or
19 determine those facts as they needed to be presented by the
20 commission and I am fully certain that everybody in this room
21 will be able to make arguments and make decisions about
22 whether or not the witness should have provided more
23 information or done more to correct testimony even if this
24 comes in -- I say that in light of what is a little unusual
25 situation here, where we're talking about the entirety of an

1 exhibit without really talking about any of the sentences or
2 terms.
3 JUDGE GONZALEZ: Well, I -- the reason why I'm doing
4 this, trying to use this approach or using this approach, is
5 because I gather that the objections are quite numerous. Is
6 that correct?
7 MR. WEBER: Yes, Your Honor, and the discussion
8 about the petition to delete footnote 3 does not even begin
9 until paragraph 37, page 23. Prior to that point there is
10 even lengthy discussion by Mr. Nelson, I mean rather by Mr.
11 Miller discussing written statements by the other witnesses
12 that he didn't even prepare and so the discussion about, well,
13 these witnesses have the right to rely on their counsel's
14 written pleadings don't even start to apply until paragraph
15 37.
16 MR. SCHNEIDER: Does counsel mean to imply that he
17 didn't review those tapes?
18 MR. WEBER: Not that he didn't review them but that
19 he was not the drafter.
20 MR. SCHNEIDER: But he didn't -- you also don't mean
21 to imply that he didn't review on behalf of United States
22 Cellular?
23 MR. WEBER: I do not mean to imply that at all?
24 MR. SCHNEIDER: Okay, so --
25 JUDGE GONZALEZ: Well, I guess really what concerns

1 me is that if the objections are as numerous as we -- as I've
2 been led to believe, perhaps the best way would be to --
3 perhaps the parties get together and see if they can't somehow
4 revise the document which will satisfy most of the concerns of
5 Mr. Hardman and Mr. Weber and then reoffer it once -- the
6 revised, we'll have to identify it again but be identified.
7 MR. SCHNEIDER: Just along that lines, Your Honor, I
8 would -- I was thinking much the same thing which is I
9 understand that this is Mr. Miller's testimony and what we can
10 do, I mean counsel -- Mr. Emmons, I and Mr. Miller may have
11 had differences about how much this needed to come in. What I
12 would propose is that we meet with Mr. Hardman and Mr. Weber,
13 we note all of their objections to paragraphs, to the certain
14 paragraph, that we take to Mr. Miller those objections and
15 then we come back at the -- at some point before he testifies
16 and respectively have rulings -- we may reach a lot of -- we
17 may reach stipulations on what may come in or what may come
18 out, that would save your time and the parties time to some
19 degree. The other thing we might be able to do then is also
20 very narrowly simplify any disputes we do have and call your
21 attention to them in a more organized fashion. In other
22 words, we might be able to shorten the testimony and what we
23 can't shorten we can all agree on how to present to you at
24 least here.
25 JUDGE GONZALEZ: Well, I think -- I think that

1 approach makes sense. I think it will save us time in the
2 long run and meet everyone's -- hopefully meet everyone's
3 concerns. Is that agreeable with everyone?
4 MR. SCHNEIDER: That's agreeable.
5 MR. WEBER: That's fine, Your Honor.
6 JUDGE GONZALEZ: All right, well, then we'll go
7 ahead then and I'll withdraw the identification then of that
8 particular exhibit and just reidentify the abridged or
9 modified exhibit.
10 (Whereupon, identification of TDS-USCC
11 Exhibit No. 10 withdrawn.)
12 MR. EMMONS: We will do that, Your Honor, thank you.
13 JUDGE GONZALEZ: All right, and we'll go on to the
14 next exhibit.
15 MR. EMMONS: The next exhibit, Your Honor, is -- and
16 I ask to be identified is TDS-USCC Exhibit 11 which is the
17 written direct testimony of Allen Y. Naftalin, N A F T A L I
18 N, totalling thirteen pages of text plus a covering
19 declaration and with five tabs, A through E. Tab A is a
20 compilation of letters and memoranda of various dates and the
21 exhibit totals fifty pages. Tab B is an exhibit of five
22 pages, the first page of which is a telecopy cover sheet dated
23 sometime November 1987.
24 JUDGE GONZALEZ: All right.
25 MR. EMMONS: Tab C is a compilation of time billing

1 records of the firm of Toteen and Naftalin and this exhibit
2 goes 32 pages.
3 JUDGE GONZALEZ: All right.
4 MR. EMMONS: Tab D is a two page letter dated
5 February 19, 1988.
6 JUDGE GONZALEZ: All right.
7 MR. EMMONS: And Tab E is a one page letter dated
8 October 4, 1988.
9 JUDGE GONZALEZ: All right.
10 MR. EMMONS: And I would offer TDS-USCC Exhibit 11
11 into evidence.
12 JUDGE GONZALEZ: All right, that document identified
13 as described by counsel along with -- which consists of
14 testimony of Allen Naftalin and Tabs A through E. Are there
15 any objections to the receipt of that document?
16 (Whereupon, the document referred to as
17 TDS-USCC Exhibit No. 11 was marked for
18 identification.)
19 MR. WEBER: Yes, Your Honor, as to Mr. Naftalin's
20 statement, I would first object to the first sentence in
21 paragraph 15 as irrelevant.
22 MR. HARDMAN: Also, Your Honor, the document speaks
23 for itself and his characterization is not appropriate.
24 MR. EMMONS: Your Honor, I think we can withdraw
25 that -- we're referring just to the first sentence?

1 MR. WEBER: Right.
2 JUDGE GONZALEZ: Just the first sentence.
3 MR. EMMONS: Of paragraph 15.
4 JUDGE GONZALEZ: All right, it's withdrawn.
5 MR. EMMONS: Well, let me just make sure that
6 counsel for U.S. Cellular doesn't have a problem doing that.
7 MR. SCHNEIDER: I'd like to read it.
8 JUDGE GONZALEZ: All right.
9 MR. SCHNEIDER: It took me a minute to find it, I'm
10 sorry. I think the rest of the paragraph has -- doesn't lose
11 any context by the deletion of its --
12 JUDGE GONZALEZ: All right, it's stricken, then that
13 is the first sentence in paragraph 15. Any further
14 objections?
15 MR. WEBER: Yes, actually my next objection may be
16 more problematic in light of what we have done with Mr.
17 Miller's statement but in paragraph 21, the fourth sentence,
18 which starts I have reviewed and agree, I would move to strike
19 that as irrelevant.
20 MR. EMMONS: Your Honor, can we make that sentence
21 the subject of the same procedure of what we've just adopted
22 for Mr. Miller's testimony. That is to say that we will
23 include his part in the discussion with counsel for -- zero in
24 toward the Settlement Group.
25 MR. WEBER: And that would also be the last sentence

1 in that paragraph as well.
2 MR. EMMONS: We can do that too.
3 JUDGE GONZALEZ: In other words you want me to delay
4 ruling on the objection until you've amended or made changes
5 in the --
6 MR. EMMONS: If you could -- if you could reserve
7 ruling on that particular objection, Your Honor, and we will
8 revisit that at the time we come back -- which I hope will be
9 --
10 JUDGE GONZALEZ: Is that all right with you, Mr.
11 Weber?
12 MR. WEBER: That would be fine.
13 JUDGE GONZALEZ: All right, any further objections?
14 MR. SCHNEIDER: The last sentence here, the last
15 sentence that you were speaking of is one that says it was my
16 affirmed opinion that everything stated in the petition was
17 true, accurate and candid?
18 MR. WEBER: That's correct.
19 MR. SCHNEIDER: And that petition refers to the
20 petition to delete footnote 3, not anything else?
21 MR. WEBER: My understanding is that that is
22 correct.
23 MR. SCHNEIDER: Well, I have no objection -- no
24 problem with talking about it --
25 MR. WEBER: I would also move to strike all of

1 paragraph 22 except for the last sentence but including -- but
2 also to strike the first three words of the last sentence in
3 order for it to make sense as irrelevant.
4 JUDGE GONZALEZ: Mr. Emmons?
5 MR. EMMONS: I see differences between the various
6 sentences, Your Honor, but as I understand the objection it
7 goes to all of the sentences except for the last sentence.
8 Let me start with the second sentence which says neither I nor
9 to the best of my knowledge at Toteen Naftalin ever advised
10 TDS or USCC that those activities placed USCC in control of
11 LaStar of violated FCC policy. That, Your Honor, is probative
12 of the state of mind of the principals of TDS and USCC and in
13 fact is exactly consistent with their testimony that they were
14 never advised such by Toteen and Naftalin.
15 MR. WEBER: I'd be agreeable to allow that sentence
16 to stay in if the others come out.
17 MR. EMMONS: Well, the following sentence is in the
18 same category and indeed the following sentence is identical
19 in substance to paragraph 40 of Mr. Belendiuk's testimony
20 which has been admitted. So, at least as to the second and
21 third sentences I think that that's probative of the state of
22 mind and -- the state of mind of the principals and
23 corroborates the principals own testimony on the same points
24 and therefore must come in.
25 MR. WEBER: I would disagree with the third

1 sentence, the one starting moreover, any discussion Mr.
2 Naftalin had with Arthur Belendiuk does not get into the minds
3 of those people at TDS or USCC.
4 MR. EMMONS: Well, okay.
5 MR. SCHNEIDER: We could delete --
6 JUDGE GONZALEZ: With the Arthur Belendiuk
7 reference.
8 MR. WEBER: And Sidley and Austin?
9 MR. SCHNEIDER: If we said in none of my discussions
10 with anyone at TDS --
11 JUDGE GONZALEZ: Or USCC -- would that be -- would
12 that meet your concerns Mr. Weber?
13 MR. WEBER: I'd also still move to strike the first
14 sentence though.
15 JUDGE GONZALEZ: And we'll ask the witness when the
16 witness appears whether they adopt the change, we're making
17 those changes, correct?
18 MR. EMMONS: Yes.
19 JUDGE GONZALEZ: Tentative, they're tentative
20 changes, of course.
21 MR. EMMONS: Yes, I think that tentative change in
22 the third sentence is acceptable so that it would read,
23 moreover in none of my discussions with anyone at TDS or USCC
24 did anyone ever say anything that indicated to me that they
25 believed USCC controlled LaStar and we'll review that with the

1 witness, Your Honor. I don't want to yield on the first
2 sentence. I don't want to withdraw it because we do want to
3 preserve the point that we believe that the good faith of the
4 attorneys is at least theoretically an issue and I don't want
5 to agree to withdraw something that we very well may need to
6 rely on later depending on what opposing parties may do or say
7 in the case.
8 MR. WEBER: The Bureau would still argue that Mr.
9 Naftalin's state of mind is irrelevant. What's relevant is
10 the state of mind of the witnesses whose candor has been
11 called into question.
12 JUDGE GONZALEZ: I think it absent -- maybe I'm not
13 saying the point but absent any evidence addressing the state
14 of mind of these attorneys, how could I ever reach a decision
15 that somehow that their state of mind was --
16 MR. SCHNEIDER: In part what I was going to say --
17 JUDGE GONZALEZ: -- that they in fact did not act
18 properly.
19 MR. SCHNEIDER: -- in part what I'm hearing today,
20 Your Honor, is statements that indicate that no argument's
21 going to be made, that these attorneys weren't -- were not
22 acting in good faith, believed that what they were submitting
23 was accurate. If that's true --
24 JUDGE GONZALEZ: Well, that's --
25 MR. SCHNEIDER: -- then I follow what you're saying.

1 JUDGE GONZALEZ: -- the opposing parties have in
2 every instance sought to exclude any testimony as to their --
3 the bona fides of the attempts that they made on behalf of
4 their clients.
5 MR. SCHNEIDER: To explain out state of mind, Your
6 Honor, you try a case for several years and somebody concedes
7 a point, it takes a little while to see what's been -- but --
8 JUDGE GONZALEZ: But we will strike that first
9 sentence and which begins at no time and ends with control of
10 LaStar. But the second sentence will remain, the third
11 sentence we are tentatively modifying it and will go back over
12 that sentence when the witnesses present it. Then is it then
13 helpful also to cross out to the contrary?
14 MR. EMMONS: No, I think that that --
15 JUDGE GONZALEZ: With the moreover --
16 MR. EMMONS: -- that's the natural transition.
17 JUDGE GONZALEZ: -- moreover, I am sorry, to the
18 contrary, surely. All right, well, then again to the contrary
19 will also remain part of that final sentence. Any further
20 objections, Mr. Weber:
21 MR. WEBER: Yes, Your Honor, I would move to strike
22 the first two sentences of paragraph 23 as irrelevant and
23 speculative.
24 JUDGE GONZALEZ: The first two sentences. I think -
25 - I see. Again, I think that pretty much is --

1 MR. EMMONS: We'll have the same position, Your
2 Honor, I understand your -- the ruling on the petition.
3 JUDGE GONZALEZ: All right, well, then I'll go ahead
4 and strike that as well. Any further objection, Mr. Weber?
5 MR. WEBER: No, Your Honor.
6 JUDGE GONZALEZ: Mr. Hardman?
7 MR. HARDMAN: Yes, Your Honor, I do have a -- too, I
8 think. On paragraph 11, on page 6, the second full sentence
9 which begins the petition was based on the structural
10 provisions. The document speaks for itself and I object to
11 the witnesses characterization of it as testimony of fact.
12 JUDGE GONZALEZ: Mr. Emmons?
13 MR. EMMONS: I agree the document will speak for
14 itself but I think that if we could reform this to -- rather
15 than to be an assertion of -- by Mr. Naftalin of what the
16 document said but rather to state his understanding of what it
17 said because that's relevant to the ensuing sentences which --
18 MR. HARDMAN: Okay, when you say his understanding,
19 you mean his interpretation --
20 MR. EMMONS: His interpretation, yes.
21 MR. HARDMAN: His interpretation?
22 MR. EMMONS: Yes.
23 MR. HARDMAN: That would be satisfactory to me.
24 JUDGE GONZALEZ: So, can we -- to say to say I
25 understood the petition?

1 MR. EMMONS: Yes, I would say start the sentence, "I
2 understood that the petition was based -- "
3 MR. HARDMAN: Could I offer the suggestion that the
4 word interpretation be used?
5 JUDGE GONZALEZ: I interpreted the petition.
6 MR. EMMONS: As being based.
7 JUDGE GONZALEZ: All right.
8 MR. HARDMAN: That's fine, I interpreted the
9 petition as being based --
10 JUDGE GONZALEZ: All right, that's a tentative
11 change, and we'll go over it again with the witness.
12 MR. EMMONS: Yes, we'll clear that one -- Your
13 Honor.
14 JUDGE GONZALEZ: Any further objections?
15 MR. HARDMAN: Yes, Your Honor, in paragraph 12, top
16 of page 7, the first full sentence which begins apparently he
17 had personally received --
18 JUDGE GONZALEZ: I'm sorry again, what --
19 MR. HARDMAN: Top of page 7, it's still in paragraph
20 12, the first full sentence on the page which begins on the
21 right hand side, apparently he had personally received.
22 JUDGE GONZALEZ: Yes, I see it.
23 MR. HARDMAN: This is speculation by the witness and
24 is not -- not competent.
25 MR. EMMONS: Your Honor, I don't think it's a

1 tentative speculation, it may be inartfully worded. I think
2 probably that the witness meant to say that he understood or
3 that the -- that Mr. Carlson had told him.
4 MR. SCHNEIDER: But I think that the colloquial
5 phrase apparently he had personally received, relates to the
6 prior sentence as to the basis for the call, I mean the
7 sentence says, the preceding sentence say I also recall one
8 instance in September or October 1988 when Mr. Carlson called
9 me and asked me about the status of the LaStar cell sites.
10 Apparently he had personally received some correspondence --
11 MR. HARDMAN: But that's the problem, Your Honor,
12 because this witness is not competent to testify to
13 motivation, nor can I tell that there's anything that's
14 relevant about what the motivation was. Now, the fact is,
15 number one, that Mr. Carlson called him about the cell site
16 and, number two, because the next sentence when this witness
17 is saying to what he was told to do as a result of that
18 conversation, all of that is fine, but to speculate as to why
19 the call was made or what prompted the call by this witness is
20 purely speculation.
21 MR. WEBER: I have -- I have two points to make
22 about that, first, it is clear to me from the context of this
23 paragraph that he's explaining why he's been -- why Mr.
24 Carlson's called him. He doesn't know because he hasn't
25 received what Mr. Carlson's received but this is his way of

1 explaining why the call is coming or why Mr. Carlson is
2 explaining the call. What I really object to counsel doing is
3 attempting to take a sentence out of the paragraph, change the
4 very paragraph's meaning and then assert a fact about what's
5 going on.
6 MR. HARDMAN: How does that change the meaning? His
7 testimony is first that the call occurred, what the subject
8 matter of the call was and then he recites what he was told to
9 do as part of the conversation. All of that is fact testimony
10 -- so, as to speculation that it is improper.
11 MR. SCHNEIDER: Well, you don't know whether it's
12 speculation or not. You have him available to ask --
13 MR. HARDMAN: He does not -- he had a chance to
14 write in his testimony if there was competent evidence that he
15 could offer as to why and he chose not to do so.
16 MR. SCHNEIDER: Now, he would disagree with you
17 perhaps and he might tell you that he thinks it's clear from
18 the text that what he's telling you is that he apparently
19 refers to the basis for the call and I think that to take the
20 sentence out is going to subject the interpretation of this
21 paragraph to proposed findings that are inconsistent with the
22 truth. Now, if you would -- if we -- if you'd like us to
23 reform the sentence, that's fine, if you --
24 JUDGE GONZALEZ: Well, I think -- I know the word
25 apparently is often used inartfully and I think -- pardon me,

1 I think it may have been used inartfully here. Nevertheless,
2 I see, the way it presently reads, I see some merit to Mr.
3 Hardman's objection. It really doesn't seem to offer anything
4 because it does sound like well, maybe or it seems to be or --
5 although I know apparently is used in that way -- I mean to
6 sound more definite than the sentence would appear to sound.
7 The only way I think I can handle this or I should handle this
8 is to permit Mr. Hardman to raise the objection when the
9 witness is on the stand and have the witness explain his use
10 of the word apparently. Any further objections?
11 MR. HARDMAN: No further objections, Your Honor.
12 JUDGE GONZALEZ: All right, I don't believe I've
13 heard any further objections on that. We will receive Exhibit
14 Number 11 with attachments A through E.
15 (Whereupon, the document referred to as
16 TDS-USCC Exhibit No. 11 was received into
17 evidence.)
18 MR. EMMONS: We move -- Your Honor, which would be
19 volume 7.
20 JUDGE GONZALEZ: All right.
21 MR. EMMONS: And the next exhibit for identification
22 is TDS-USCC Exhibit 12 which is a transcript of the deposition
23 testimony of Kenneth R. Meyers, M E Y E R S, in the LaStar
24 proceeding of July 1990. The transcript is 50 pages in
25 length.

1 JUDGE GONZALEZ: And it's complete?
2 MR. EMMONS: And it's complete, Your Honor, yes.
3 JUDGE GONZALEZ: All right, so identified.
4 (Whereupon, the document referred to as
5 TDS-USCC Exhibit No. 12 was marked for
6 identification.)
7 MR. EMMONS: I offer it into evidence, Your Honor.
8 JUDGE GONZALEZ: Is there any objections?
9 MR. WEBER: No objections.
10 JUDGE GONZALEZ: That is received. Next?
11 (Whereupon, the document referred to as
12 TDS-USCC Exhibit No. 12 was received into
13 evidence.)
14 MR. EMMONS: Next, Your Honor, is TDS-USCC Exhibit
15 13, which is a twelve page exhibit consisting of excerpts or
16 portions of the deposition testimony of John A. Brady, Jr., in
17 the LaStar proceedings, July 1990.
18 JUDGE GONZALEZ: All right, it's identified. Are
19 there any objections? It's received.
20 (Whereupon, the document referred to as
21 TDS-USCC Exhibit No. 13 was marked for
22 identification.)
23 MR. HARDMAN: Your Honor, I'm not sure I have an
24 objection but this witness is offered -- is testifying as part
25 of the TDS's direct case and I guess I'm puzzled as to the

1 variety of offering this transcript in. Perhaps I just don't
2 understand the --
3 JUDGE GONZALEZ: Well, Mr. Emmons?
4 MR. EMMONS: Your Honor, the testimony given in the
5 portion, the excerpted portions of this deposition transcript
6 include matters that were disclosed to the commission in the
7 very early stages of discovery in the LaStar proceeding before
8 any of the declarations or written testimony or pleadings were
9 submitted by U.S. Cellular which are the declaration
10 statements and pleadings that are -- whose candor are at issue
11 in this proceeding. The purpose of this exhibit is to
12 demonstrate that some of the matters, at least, about which
13 U.S. Cellular's candor has been questioned were disclosed
14 prior to the time when U.S. Cellular people made their
15 submissions, they were on record -- on record at the
16 commission and as Your Honor is aware the commission case law
17 is very clear that where a party has submitted prior
18 information or is aware of information having been submitted,
19 that negates any inference that the party at some later time
20 intended to deceive the commission or withhold or conceal that
21 very same information. To give you a -- example, the
22 testimony of Mr. Brady -- here, the transcript includes a
23 stipulation by LaStar's counsel with opposing counsel in that
24 deposition that there was only one meeting of the LaStar
25 management committee. That was stipulated on the record in

1 July 1990. It is alleged -- has been alleged that U.S.
2 Cellular was not candid about how many meetings there were
3 with the LaStar management committee in a statement that U.S.
4 Cellular submitted in August or September of 1990 and
5 thereafter. The point being that the information was not only
6 disclosed but stipulated to by LaStar's counsel, so, that
7 negates any inference that U.S. Cellular was trying to conceal
8 anything.
9 MR. WEBER: Your Honor, I have a comment and then a
10 question, it is really not correct to state that anything that
11 occurred in the deposition was on file or on record with the
12 commission, the depositions in the LaStar proceeding have
13 never been filed with the commission and are not part of the
14 docket and so this deposition is not part of the LaStar docket
15 and therefore has not been filed and not on the record with
16 the commission. It was part of discovery and so it was a fact
17 that was in the open, I'm not saying it was closed but it is
18 not on file with the commission. My question with the exhibit
19 itself is just more I -- I question why we only have twelve
20 pages of deposition which went on for more than a hundred
21 page, we only have twelve pages of the transcript and I
22 question the usefulness of that to some degree and would have
23 -- I don't know what other purposes they had planned to use it
24 for. We now learn of one from counsel and I would have some
25 concern that with only twelve pages certain questions may be

1 taken out of context without the entire transcript.
2 MR. EMMONS: I'd be happy to put it in.
3 JUDGE GONZALEZ: Well, that generally is a concern -
4 -
5 MR. EMMONS: I could have -- I'd be delighted to put
6 in the entire John Brady transcript and any other deposition
7 transcript that -- from 1990 that Mr. Weber and Mr. Hardman
8 may want to go in. I'd be happy to put it in. Our point,
9 Your Honor, is that much that is alleged to have been --
10 JUDGE GONZALEZ: It probably would be a good way to
11 proceed because I think otherwise we might run into a problem
12 later on.
13 MR. EMMONS: Sure.
14 JUDGE GONZALEZ: And I don't know exactly the extent
15 --I mean I don't know the extent to which you intend to use
16 this document but I think we're probably better if we had the
17 full transcript.
18 MR. SCHNEIDER: In point of fact, Your Honor, that
19 was our prior practice in other -- with all the other exhibits
20 and I think in one instance we -- since we had a rather
21 limited intent to use it we tried to keep a hundred pages or
22 so out of the record. What I would propose to do is the same
23 thing we did with several of the other volumes which is we'll
24 prepare a revised volume 7, which would include a new Exhibit
25 13, that new Exhibit 13 will include the entire deposition of