

USCC has . . . [not] acted in any way to assert control over any of the activities of La Star, beyond its actions in appointing a minority of the Management Committee.^{29/}

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It has always been the intention of La Star's venturers that La Star would be controlled by its Management Committee, which is ultimately controlled by SJI Cellular.^{30/}

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While USCC has historically been active in increasing its cellular holdings throughout the country, and would most likely consider an 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.^{31/}

35. The record in this proceeding establishes that USCC did not lack candor in these statements concerning the control of La Star. Although the Commission concluded based on the record in the La Star proceeding that USCC's activities with respect to La Star and SJI's level of involvement in La Star gave USCC de facto control over La Star under the Commission's legal criteria for assessing control, the Commission made no finding that USCC knew or believed that it controlled the joint venture. The undisputed sworn testimony of LeRoy T. Carlson, Sr., and H. Donald Nelson in this proceeding, corroborated by

^{29/} Id.

^{30/} B/P, p. 10, quoting, La Star's Motion for Summary Decision filed August 15, 1990, p. 26 ("Summary Decision Motion").

^{31/} B/P, p. 26, quoting USCC Exhibit 1 (Testimony of H. Donald Nelson), p. 13.

contemporaneous documents and the testimony of other witnesses provided in this proceeding, demonstrates that TDS, USCC and their principals believed that USCC did not control La Star. TDS, USCC and their principals therefore did not lack candor when USCC maintained that it did not control La Star.

1. LeRoy T. Carlson On Control of La Star.

36. Mr. Carlson understood from the outset that USCC was "acquiring only a minority interest" in La Star and that "the Bradys [SJI] would be in control and would operate" La Star's cellular system if La Star's application were ultimately granted. TDS/USCC Ex. 9. ¶¶ 5, 12-13. He had been pleased when he learned that the Brady family was the principal owner of La Star because he had a high professional regard for John Brady, Sr., with whom he had worked in the past. Id.

37. Mr. Carlson's assertion that he believed the Bradys controlled La Star is corroborated by his contemporaneous private handwritten notes penned on a copy of the La Star HDO released May 31, 1990, which designated the control issue based on allegations that USCC rather than SJI controlled La Star. Id. ¶ 11 and Tab B. Mr. Carlson was astonished that the FCC felt there was an issue of whether USCC controlled La Star, because to him such a notion seemed completely unfounded. Id. ¶ 11. His notes reflect his astonishment. In the bottom margin

of one page of the La Star HDO, he wrote: "Everyone who knows John B. knows he will hold on to control." Id. Tab B, p. 3. On the following page in the righthand margin Mr. Carlson wrote: "Must tell history of John Brady family - 'Control.'" Id. Tab B, p. 4. By that comment, Mr. Carlson meant that the Brady sons, like their father, were strong independent telephone people, and he believed that if that story were told, the FCC would understand that the Bradys were in control of La Star. Id. ¶ 13. These notes are genuine expressions of Mr. Carlson's true state of mind at the relevant time, because he wrote them never expecting that they would become public. Id. ¶ 11.

38. Mr. Carlson also testified that at the outset he informed both Don Nelson and Alan Naftalin (USCC's FCC counsel) that the Bradys were in control of La Star and that USCC was acquiring only a minority interest in the joint venture. Id. ¶¶ 5, 12. Mr. Nelson confirms that "Roy Carlson told me that the Bradys had the majority." TDS/USCC Ex. 2, ¶ 12. Mr. Naftalin likewise confirms that "whenever the subject came up in my conversations with him, Roy Carlson consistently expressed the view that the Bradys controlled La Star." TDS/USCC Ex. 11, ¶ 22. Moreover, Mr. Naftalin verifies that neither he nor anyone else at Koteen & Naftalin "ever advised TDS or USCC that [USCC's] activities placed USCC in control of La Star."

TDS/USCC Ex. 11, ¶ 22.^{32/} In fact, when NOCGSA first raised the control issue in a petition in February 1988, Peter Connolly of Koteen & Naftalin flatly told Mr. Carlson in a letter, "We can . . . demonstrate that TDS doesn't control La Star." TDS/USCC Ex. 11, Tab D, 1.^{33/}

2. H. Donald Nelson On Control of La Star.

39. Mr. Nelson understood and believed that in 1987 USCC simply was acquiring a 49% non-controlling interest in La Star; nobody ever suggested to him otherwise. Id. ¶ 11. More specifically, Mr. Nelson testified that when Roy Carlson introduced him to the Bradys in Chicago in August of 1987, Mr. Carlson "told me that the Bradys had the majority" and that "the

^{32/} Mr. Carlson testified in this proceeding that:

At no time did Koteen & Naftalin ever advise me that TDS or USCC were exercising control over La Star. To the contrary, I believe that during our several discussions of the issue, Alan Naftalin expressed the view that TDS and USCC were not exercising control over La Star.

TDS/USCC Ex. 9, ¶ 14.

^{33/} Mr. Carlson also testified that Arthur Belendiuk, "expressed the view that we [TDS] were not exercising control over La Star." TDS/USCC Ex. 9, ¶ 14. This was corroborated by Mr. Belendiuk. TDS/USCC Ex. 1; ¶ 20. After researching applicable Commission precedent, Mr. Belendiuk, La Star's counsel, concluded that the supermajority provisions in the La Star Joint Venture Agreement did not vest control in USCC. Id. He also discussed the control issue with Mr. Naftalin, who concurred in Mr. Belendiuk's conclusion. Id.; TDS/USCC Ex. 11, ¶ 11. Mr. Belendiuk communicated this conclusion to the principals of La Star, including principals from both SJI and USCC. TDS/USCC Ex. 1, ¶ 20; TDS/USCC Ex. 2, ¶ 37; TDS/USCC Ex. 3, ¶ 22; TDS/USCC Ex. 9, ¶ 14; TDS/USCC Ex. 4, ¶ 18.

Bradys would run the system." Id. ¶¶ 12, 19.^{34/} This is corroborated by Mr. Carlson's testimony that he "made [it] clear to Don Nelson" that "the Bradys would be in control and would operate" the system. TDS/USCC Ex. 9, ¶ 5. Mr. Nelson states that this made sense to him because of the Bradys' local Louisiana background and connections and their significant wireline telephone experience. TDS/USCC Ex. 2, ¶ 19.

40. This uncontroverted testimony that Mr. Nelson believed that SJI, not USCC, controlled La Star is corroborated by other witnesses and extensive documentary evidence. As demonstrated in greater detail below, Mr. Nelson testified candidly in the La Star proceeding about his view of the functioning of the Management Committee and his perspective on his actions with respect to La Star. See infra ¶¶ 47-65. When viewed in context, his perspective on the Management Committee and on the nature of his own involvement support his belief that

^{34/} On August 19, 1987, after the closing on USCC's acquisition of its interest in La Star, the principals of SJI, TDS and USCC met in Chicago. See TDS/USCC Ex. 1, ¶ 4; TDS/USCC Ex. 2, ¶ 12; TDS/USCC Ex. 3, ¶ 5; TDS/USCC Ex. 9, ¶ 6; TDS/USCC Ex. 4, ¶ 3. Mr. Carlson had asked Mr. Nelson to drop by the meeting, which was in progress when Mr. Nelson arrived. TDS/USCC Ex. 2, ¶ 12. Mr. Nelson stayed at the meeting for approximately 15 minutes. TDS/USCC Ex. 2, ¶ 12; see TDS/USCC Ex. 1, ¶ 4. Mr. Carlson told Mr. Nelson that the Bradys had the majority and controlling interest in La Star, that Mr. Nelson should provide whatever assistance La Star requested for its application, that La Star's counsel was Mr. Arthur Belendiuk, who would call Mr. Nelson with questions to which Mr. Nelson should respond, and that USCC would pay the bills for La Star. TDS/USCC Ex. 2, ¶ 12.

USCC did not control La Star, whether or not that view ultimately was held to be legally correct. Id.

41. First, Mr. Nelson understood that the SJI members of the Management Committee (the Bradys and Sinclair Crenshaw) consulted with La Star's counsel and approved counsel's proposals, as the record in this proceeding shows they did. When La Star's counsel Arthur Belendiuk called Mr. Nelson for USCC's consent to a proposed course of action, he typically told Mr. Nelson in substance that he had already consulted with SJI and that SJI had approved the proposal. TDS/USCC Ex. 2, ¶¶ 22, 23, 24. Mr. Nelson's testimony on this point is corroborated by Messrs. Belendiuk, Brady and Crenshaw and by telephone records. TDS/USCC Ex. 1, ¶ 30.^{35/} Mr. Belendiuk confirmed that he generally called John Brady and Mr. Crenshaw first and then Mr. Nelson, TDS/USCC Ex. 1, ¶ 30, and Mr. Brady and Mr. Crenshaw confirmed that Mr. Belendiuk called them for SJI's approval. TDS/USCC Ex. 3; ¶ 12; TDS/USCC Ex. 4, ¶ 14.

42. At least 32 items of correspondence sent to Mr. Nelson from 1987 to 1990 show on their face that La Star's counsel was communicating with John Brady and Sinclair Crenshaw

^{35/} Telephone records in evidence corroborate communications between SJI and La Star's counsel, reflecting a minimum of 55 telephone calls totaling 263 minutes from La Star's counsel's office to SJI and 108 calls totaling 608 minutes from SJI to La Star's counsel's office between October 1987 and April 1991. TDS/USCC Ex. 1, Tab H; TDS/USCC Ex. 3, Tab A.

of SJI.^{36/} In addition, as part of Mr. Nelson's review of bills for La Star, he saw the monthly invoices submitted by Mr. Belendiuk for legal fees and expenses, which frequently listed conferences with Mr. Brady or Mr. Crenshaw in the description of services. TDS/USCC Ex. 2, ¶ 24 & Tab E. This evidence amply supports Mr. Nelson's testimony that he understood that Mr. Belendiuk, in directing the prosecution of La Star's application, was consulting with SJI and seeking its approval of proposed actions, and was not looking for direction only from USCC.

43. Second, the La Star-related activities of Mr. Nelson and other USCC principals are not inconsistent with Mr. Nelson's belief that SJI was in control of La Star. Mr. Nelson understood that USCC's employees were performing certain tasks, such as paying La Star's bills, because the La Star Joint Venture Agreement obligated USCC to do so. According to his uncontradicted testimony, he did not think, and was never advised, that the performance of any of the tasks that flowed from this obligation in the Joint Venture Agreement gave USCC control over La Star. TDS/USCC Ex. 2, ¶ 21.

^{36/} This correspondence included letters addressed or copied to Mr. Brady and Mr. Crenshaw by name and memoranda to the La Star Management Committee of which Mr. Brady and Mr. Crenshaw were members. TDS/USCC Ex. 2, ¶ 24 and Tabs D and E. Mr. Belendiuk had been retained as counsel by La Star prior to USCC's acquisition of its interest in La Star in 1987. TDS/USCC Ex. 1, ¶¶ 3-4.

44. Likewise uncontradicted is Mr. Nelson's testimony that he did not consider, and was never advised, that USCC was exercising any control over La Star by cooperating with requests for assistance from La Star's counsel or engineering consultant. Mr. Nelson understood that the reason La Star's counsel or engineering consultant sought USCC's assistance from time to time was simply that USCC possessed considerable practical experience in constructing and operating cellular systems. Id. ¶ 25. This testimony was confirmed by counsel Arthur Belendiuk, TDS/USCC Ex. 1, ¶ 11, as well as by La Star's consulting engineer Richard Biby, TDS/USCC Ex. 5, ¶ 7, and his associate Mark Peabody, TDS/USCC Ex. 6, ¶ 12. Mr. Nelson testifies:

I did not at any time think that the assistance United States Cellular provided on request to La Star put United States Cellular in control of the joint venture or was otherwise improper under FCC policy. To the contrary, I assumed that it was entirely proper for United States Cellular to provide whatever assistance La Star requested for the application process, because United States Cellular was a 49% partner in the joint venture. Moreover, neither Art Belendiuk nor our own FCC counsel, Koteen & Naftalin, advised that there was anything wrong with doing it.

TDS/USCC Ex. 2, ¶ 37; see also id. ¶¶ 18, 80. Mr. Belendiuk, Mr. Miller, and Mr. Naftalin all confirm that they never advised USCC that its activities put USCC in control of La Star. TDS/USCC Ex. 1, ¶ 20; TDS/USCC Ex. 10, ¶ 55; TDS/USCC Ex. 11, ¶ 22.

45. In short, the record amply demonstrates that Roy Carlson and Donald Nelson believed that USCC did not control La Star. Their testimony that they did not believe that USCC controlled La Star is corroborated by numerous contemporaneous documents and the testimony of counsel and other witnesses. Accordingly, no material issue remains as to their good faith belief and understanding that USCC was a minority partner not in control of the joint venture, notwithstanding the contrary legal conclusion reached by the Commission in the La Star proceeding.

C. The Functioning of the Management Committee.

46. The Bill of Particulars questions whether a number of statements made to the Commission in the La Star proceeding candidly described the functioning of La Star's Management Committee. Specifically, the Bill of Particulars and the HDO cite the testimony of H. Donald Nelson, the pleadings filed on behalf of USCC by its counsel, Koteen & Naftalin, and the pleadings and filings of La Star as examples of potential overstatements of the role of the Management Committee. The issue essentially is whether USCC was seeking to overstate the role of the Management Committee in order to conceal or downplay USCC's own role in La Star.

47. The record in this proceeding now establishes that USCC did not misrepresent facts or lack candor in

statements concerning La Star's Management Committee. Rather, the statements reflected USCC's genuine understanding of the powers of the Management Committee under the Joint Venture Agreement and the locus of actual control of La Star. To the extent that the testimony or pleadings submitted in the La Star proceeding created an impression that the Management Committee acted frequently or formally, the evidence in this proceeding establishes that there was no intent to mislead the Commission.

1. Statements of Donald Nelson

48. In various declarations that accompanied pleadings and in his testimony submitted in the La Star proceeding, Mr. Nelson made various statements regarding the operation of the Management Committee. Illustrative of such statements were the following:

MR. TOLLIN: *To your knowledge, does the management committee for La Star have complete and exclusive power to direct and control La Star's activities?*

MR. NELSON: *Yes.*^{37/}

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Since my appointment to the Management Committee in August, 1987, I have always acted on the belief that La Star's Management Committee is controlled by the three members appointed by SJI Cellular. I am not

^{37/} B/P, p. 5, quoting July 18, 1990 deposition testimony of H. Donald Nelson, p. 12.

aware of a single instance where that has not been the case.^{38/}

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I understood that [Mr. Belendiuk] had first spoken to someone at SJI Cellular and that the course of action had already been approved by SJI Cellular. In these circumstances, I did not believe that my approval was necessary, since three members of the Management Committee had already given theirs.^{39/}

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I conferred with the SJI Cellular members of the Management Committee only when a particular issue facing the venture required a joint effort to resolve. For example, when La Star was engaged in settlement negotiations with New Orleans CGSA, Inc. ("NOCGSA"), La Star needed to develop a settlement proposal to present to NOCGSA. Because of the wide variety of possible settlement options and the different interests of the two venturers, a telephone conference was held.^{40/}

While the HDO and the Bill of Particulars raise questions about Mr. Nelson's candor concerning the functioning of the Management Committee, the evidence in this proceeding demonstrates that his statements were true to the best of his knowledge and belief and that he had no intent to mislead the Commission. Much of his testimony about the operations of the Management Committee, which he explicitly characterized as "informal," was entirely accurate. Moreover, on several points where the HDO or the Bill

^{38/} B/P, pp. 10-11, quoting August 1990 Declaration of H. Donald Nelson, p. 2.

^{39/} B/P, p. 11, quoting August 1990 Declaration of H. Donald Nelson, p. 3.

^{40/} B/P, p. 11, quoting August 1990 Declaration of H. Donald Nelson, p. 3.

of Particulars question his candor, the record makes clear that he supplied accurate and complete information during the La Star proceeding, often in the very testimony at issue; this negates any inference that he intended to deceive the Commission. Finally, to the extent that any of his statements were inaccurate or incomplete, the evidence amply demonstrates that those statements were not the product of intentional deceit, but instead resulted from honest failures of recollection or inability to convey completely his perspective on the facts.

49. As an initial matter, as discussed above, the record establishes that Mr. Nelson genuinely believed that SJI, not USCC, controlled La Star. See supra ¶¶ 39-45. Mr. Nelson has testified in this proceeding that he believed the Joint Venture Agreement vested control of La Star in SJI, and that, in his view, based on what he was told by La Star's counsel, the SJI principals were consulted on and approved La Star's actions. See infra, ¶¶ 55-62. His testimony is corroborated by other witnesses and by documents submitted in this proceeding. Id. Accordingly, there is no basis in the record for finding that Mr. Nelson lacked good faith when he asserted that SJI controlled the Management Committee and that the Management Committee controlled La Star. See infra ¶¶ 58-62.

50. Many of Mr. Nelson's statements merely described provisions of the Joint Venture Agreement concerning the

operation and control of the venture, which he genuinely believed had been assumed by USCC in good faith. Mr. Nelson explained in this proceeding that when he testified that the Management Committee was "controlled by the three members appointed by SJI Cellular," he was describing the composition of the Committee, not its activities. TDS/USCC Ex. 2, ¶ 58 and Tab R, p. 3. On its face, that testimony referred not to Management Committee control of La Star, but to SJI's control of the Management Committee. Likewise, the paragraph of his testimony containing that statement referred to the make-up of the Management Committee, not to the nature or extent of the Committee's activity.

51. The Joint Venture Agreement did give SJI three of the five seats on the La Star Management Committee and, in Mr. Nelson's view, majority control of the Committee. See TDS/USCC Ex. 14, at 109-134 (Joint Venture Agreement); TDS/USCC Ex. 2, ¶¶ 16, 58.^{41/} At his deposition in the La Star proceeding, Mr. Nelson answered "yes" to the question whether the Management Committee had "the complete and exclusive power to direct and control La Star's activities." TDS/USCC Ex. 2, Tab I, p. 12.

^{41/} SJI appointed John Brady, Pat Brady, and Mr. Crenshaw as its three representatives on the Committee. TDS/USCC Ex. 1, ¶ 4; TDS/USCC Ex. 2, ¶ 16 & Tab B. By letter dated September 14, 1987, USCC formally appointed Kenneth R. Meyers and Mr. Nelson as its representatives on the Committee. TDS/USCC Ex. 2, ¶ 16 & Tab B; see TDS/USCC Ex. 1, ¶ 14. Mr. Meyers, USCC's Vice President/Finance, was appointed because USCC viewed its role in La Star as involving financial or investment issues, rather than operational issues. TDS/USCC Ex. 2, ¶ 16.

That statement was accurate; there is no question that the Management Committee had such legal power, and it could direct and control La Star's affairs. See TDS/USCC Ex. 14, at 109-134 (Joint Venture Agreement).

52. The record here demonstrates that Mr. Nelson was not trying either to imply that the Committee operated formally or to overstate the extent to which its individual members were actively involved in prosecuting La Star's application:

I [did not] intend to suggest (or think I was suggesting) that the Management Committee members themselves actively and formally directed La Star's day-to-day FCC activity for its application. I was only trying to make clear my understanding that United States Cellular did not and could not control the Committee because there were three SJI members and two United States Cellular members. When I said, 'I am not aware of a single instance where that has not been the case'. . . I meant that I knew of no La Star decision or action taken without SJI's approval or over SJI's objection.

TDS/USCC Ex. 2, ¶ 58. The issue thus is whether Mr. Nelson's testimony in the La Star proceeding accurately described the manner in which he believed that the Management Committee's power was exercised. As described below, Mr. Nelson genuinely and reasonably believed that the power to control La Star's affairs was being exercised in an informal manner through discussions between La Star's counsel and principals of the joint venture. Thus, Mr. Nelson's testimony accurately described how he believed that the Management Committee's power was exercised.

53. Evidence in the record strongly supports Mr. Nelson's claim that he was not seeking to mislead the Commission into believing that La Star's Management Committee operated more formally and frequently than it actually did. He explicitly acknowledged in his August 1990 Declaration that, "Since August 1987, La Star's Management Committee has functioned on an informal basis." TDS/USCC Ex. 2, Tab R, p. 3 (emphasis added). He repeated the same statement verbatim in his written direct hearing testimony submitted in September 1990. TDS/USCC Ex. 2, Tab T, p. 4. Thus, he plainly disclosed to the Commission the informality of Committee operation. To this day, he still believes that this was a fair and accurate description of how the Committee functioned. TDS/USCC Ex. 2, ¶ 58.

54. Mr. Nelson understood that La Star's counsel Arthur Belendiuk was consulting with the SJI members of the Management Committee separately from his calls to Mr. Nelson. The undisputed facts developed in this proceeding now confirm that the Management Committee did operate on an informal basis through telephone polling by Mr. Belendiuk to seek the approval of each joint venture partner for a proposed courses of action. TDS/USCC Ex. 1, ¶ 30; TDS/USCC Ex. 2, ¶ 14. When he wanted authorization, Mr. Belendiuk first typically called John Brady or Mr. Crenshaw, or both, to seek approval for and to discuss proposed courses of action. TDS/USCC Ex. 1, ¶ 30; TDS/USCC Ex. 3, ¶ 12; TDS/USCC Ex. 4, ¶ 14. Mr. Belendiuk understood that

when SJI's principals approved proposed courses of action, that person was speaking for all of the SJI members of the Management Committee. TDS/USCC Ex. 1, ¶ 30; see TDS/USCC Ex. 3 ¶ 12.^{42/}

55. Mr. Belendiuk typically then called Mr. Nelson to seek USCC's consent. TDS/USCC Ex. 1, ¶ 30. He usually told Mr. Nelson that the people down South, or the people at SJI, or the Bradys, had already approved the proposal and asked him for his views. TDS/USCC Ex. 2, ¶ 23; TDS/USCC Ex. 1, ¶ 30. In these situations, Mr. Nelson would respond in substance that the proposed action was fine. TDS/USCC Ex. 2, ¶ 23. As was the case with SJI, Mr. Belendiuk understood that when Mr. Nelson or Mr. Carlson spoke, that individual was speaking for USCC. TDS/USCC Ex. 1, ¶ 32. All decisions thus were resolved through informal discussions, and there was no need for any formal meeting or vote of the Management Committee. TDS/USCC Ex. 1, ¶ 30; TDS/USCC Ex. 3, ¶ 10. The powers of the Management Committee therefore were exercised informally. TDS/USCC Ex. 2, ¶ 59; TDS/USCC Ex. 3, ¶ 10.^{43/}

^{42/} Because John Brady knew the views of the other La Star Management Committee representatives from SJI, he was comfortable speaking for SJI when he approved a course of action proposed by Mr. Belendiuk. TDS/USCC Ex. 3, ¶ 12. SJI is a small, very closely-held company and its Management Committee members worked together on a daily basis managing the Brady family's various business interests.

^{43/} Mr. Nelson contemplated that the Management Committee would take a more active and formal role in directing the affairs of La Star once a construction permit was issued and La Star needed to incur substantial expenditures for its fixed assets to construct a cellular system. TDS/USCC Ex. 2, ¶ 20.

56. This undisputed and corroborated testimony thus demonstrates that Mr. Nelson did not lack candor when he asserted that counsel had told him that SJI previously had approved proposed actions. See HDO, ¶¶ 22-24. His written La Star testimony was truthful and accurate in stating that, "I understood that [Mr. Belendiuk] had first spoken to someone at SJI Cellular and that the course of action had already been approved by SJI Cellular." See TDS/USCC Ex. 2, Tab W at 5.^{44/}

57. The HDO also questions whether Mr. Nelson was attempting to mislead the Commission about the formal functioning of the Management Committee by referencing the "Management Committee" so many times in his written testimony. The Commission questioned those references because "Nelson's testimony does not disclose that the Management Committee only met once and that there were never any votes taken." HDO, ¶ 30. The testimony in question is Mr. Nelson's direct written testimony submitted in September 1990 as La Star Exhibit 15.^{45/} Any inference that Mr. Nelson in September 1990 was attempting

^{44/} Mr. Nelson's written testimony also asserted that, "I did not believe that my approval was necessary, since three members of the Management Committee had already given their approval." TDS/USCC Ex. 2, Tab W, p. 5. This statement was accurate for two reasons. First, Mr. Nelson understood that SJI had approved the action. See supra, ¶¶ 58-62. Second, Mr. Nelson meant that he thought his approval was unnecessary because even if he had opposed an action favored by SJI (which Mr. Nelson never did), the SJI position would prevail because SJI outnumbered USCC on the Management Committee by three to two. TDS/USCC Ex. 2, ¶ 61.

^{45/} A copy is in the record of this proceeding as TDS/USCC Ex. 2, Tab T.

to conceal "that the Management Committee only met once and that there were never any votes taken" is refuted by Nelson's earlier deposition testimony in July 1990, where he had readily disclosed those very facts:

Q. *How often and where has the committee met?*

A. *I remember the original meeting here in Chicago, but any other meetings have been over the phone or through Mr. Belendiuk.*

TDS/USCC Ex. 2, Tab I, p. 16.

Q. *Have any actions been taken by the management committee which required a vote, formal vote? Can you remember any votes that have been taken while you've been on the management committee?*

A. *I don't recall any.*

Id. at 18.

Q. *Is it your testimony that you cannot recall ever holding a formal vote since you've been a management committee member?*

A. *I don't recall a formal vote.*

Id. at 19. Having already disclosed the information in the La Star proceeding in response to deposition questions from opposing counsel before the La Star hearing, Mr. Nelson cannot have intended to conceal that same information when he provided

his written testimony at the hearing.^{46/} In fact, when he executed the declarations at issue, Mr. Nelson knew that he had already testified to these facts a few weeks earlier. TDS/USCC Ex. 2, ¶ 60. While his written statement could have been more precise, the record of prior disclosure demonstrates that he was not attempting to be less than truthful. Commission law is quite clear that under such circumstances no deceptive intent will be found.^{47/}

^{46/} Moreover, Kenneth R. Meyers, USCC's other representative on the Management Committee, testified at his deposition in the La Star proceeding that there were no meetings of the Committee. TDS/USCC Ex. 12, at 10. Indeed, at depositions, La Star and NOCGSA had stipulated that there were no formal meetings of the Management Committee. See TDS/USCC Ex. 13, at 12-13.

^{47/} WWOR-TV, Inc., 6 FCC Rcd. 193, 206 (1990) ("We do not infer an intent to deceive when an applicant has disclosed information on the public record"); Intercontinental Radio, Inc., 98 F.C.C.2d 608, 639-40 (1984) (submission of inaccurate statement does not indicate intent to deceive when accurate information previously supplied by party is "a matter of open Commission record"); Calvary Educational Broadcasting, Inc., 9 FCC Rcd. 6412, 6420 (¶36) (Rev. Bd. 1994) ("It is unlikely that one intending to deceive the Commission by providing inaccurate information in a report would then accompany the report with the very information it had omitted from the text"); Barry Skidelsky, 7 FCC Rcd. 1, 3 (Rev. Bd. 1992) (no intent to deceive where applicant had produced documents that disclosed the allegedly withheld information); Valley Broadcasting Company, 4 FCC Rcd. 2611, 2615-16 (¶24) (Rev. Bd. 1989) (no intent to mislead where applicant had previously disclosed the information in another FCC proceeding); Omaha Channel 54 Broadcasting Group, Limited Partnership, 3 FCC Rcd. 870, 871 (Rev. Bd. 1988) (no intent to deceive at hearing where applicant clearly disclosed the relevant information in pre-hearing discovery); Christian Broadcasting of the Midlands, Inc., 2 FCC Rcd. 6404, 6406 (1987) (no inference of intent to conceal where party carried out its activity "in the plain sight of its adversary").

58. The Bill of Particulars also questions whether Mr. Nelson falsely implied that the Management Committee had more than five telephone conferences. At his deposition in the La Star proceeding, Mr. Nelson testified:

Mr. TOLLIN: How often and where has the committee met?

Mr. NELSON: I remember the original meeting here in Chicago, but any other meetings have been over the phone or through communications through Mr. Belendiuk.

Mr. TOLLIN: Any recollection of how many telephone conferences [of the Management Committee] there were?

Mr. NELSON: No, I don't recall.

Mr. TOLLIN: Less than five?

Mr. NELSON: Probably more than five.

Mr. TOLLIN: And who were on those telephone conferences?

Mr. NELSON: Generally Mr. Belendiuk and myself.

TDS/USCC Ex. 2, Tab I at 16 (emphasis added for portion quoted in B/P, p. 5). Put in context, this testimony did not suggest that there were more than five telephone conferences of the members of the Management Committee. Mr. Nelson was simply stating that he had more than five telephone conferences with Mr. Belendiuk. Mr. Belendiuk called Mr. Nelson on several occasions, TDS/USCC Ex. 2, ¶ 22, and while a telephone conversation between two people may not be perceived by everyone as a conference, Mr. Nelson's testimony that the conferences were between only himself and Mr. Belendiuk demonstrates that he was not attempting to mislead the Commission. Moreover, there

were many more than five calls between Mr. Belendiuk and SJI. See TDS/USCC Ex. 3, ¶ 13 & Tab B; TDS/USCC Ex. 1, Tab M. Mr. Nelson did not intend to convey the impression queried in the Bill of Particulars, and the context of the La Star deposition testimony quoted above supports that assertion. See TDS/USCC Ex. 2, ¶ 63.

59. The Bill of Particulars also quotes from certain portions of Mr. Nelson's deposition testimony where he was asked whether there was a vote to amend the Joint Venture Agreement in June 1990 to eliminate certain supermajority provisions and to provide for payment of expenses in proportion to equity interests in the joint venture. See B/P, p. 5. Mr. Nelson's deposition contains the following passage:

Mr. TOLLIN: When the joint venture agreement was amended, was there a meeting by the management committee to discuss the amendment and a formal vote taken?

Mr. NELSON: Which question do you want me to answer?

Mr. TOLLIN: Was there a meeting?

Mr. NELSON: Where people got together?

Mr. TOLLIN: Yes.

Mr. NELSON: No.

Mr. TOLLIN: Could you describe what those communications were?

Mr. NELSON: There was communication with Mr. Belendiuk.

Mr. TOLLIN: Okay. Mr. Belendiuk and yourself?

Mr. NELSON: Yes.

Mr. TOLLIN: Okay. And no one else was on that call?

Mr. NELSON: On the call? Not that I recall.

Mr. TOLLIN: Okay. So no formal vote was taken by committee members as to whether to approve the amendment?

Mr. NELSON: I don't know what you mean by "formal," but

Mr. TOLLIN: Was there a vote [on whether to amend the Joint Venture Agreement]?

Mr. NELSON: I did tell Mr. Belendiuk that we'd voted for it. The answer is yes. You know, that's what we did in agreeing to the agreement.

TDS/USCC Ex. 2, Tab I at 28-30 (emphasis added for portion quoted in B/P, p. 5). In this passage, Mr. Nelson intended to indicate that by "agreeing" to the amendment, USCC had effectively "voted" in favor of the amendment. TDS/USCC Ex. 2, ¶ 74. Read in context, Mr. Nelson's testimony in La Star supports this interpretation of his response to NOCGSA's counsel and was candid.

60. The Bill of Particulars also cites the following portion of Mr. Nelson's written testimony in La Star as suggesting that the Management Committee was running the affairs of La Star and that Mr. Nelson consulted with the Management Committee several times:

- [1] I conferred with the SJI Cellular members of the Management Committee only when a particular issue facing the venture required a joint effort to resolve.
[2] For example, when La Star was engaged in settlement negotiations with [NOCGSA], La Star needed to develop a settlement proposal to present to NOCGSA.

[3] Because of the wide variety of possible settlement options and the different interests of the two venturers, a telephone conference was held. [4] The Management Committee discussed the various options and unanimously agreed to follow a settlement plan proposed by Sinclair H. Crenshaw, a member of the Management Committee, appointed by SJI Cellular. [5] At another time, it had been suggested by Mr. Belendiuk that modifications be made to the La Star Joint Venture Agreement. [6] Certain supermajority provisions, which I understand had never been invoked by Star and which United States Cellular had no interest in invoking were to be deleted, and Star's financial obligations to La Star were reduced so as to be proportionate to its forty-nine percent joint venture interest. [7] USCC's counsel advised us that it would be in the best interest of USCC to acquiesce in the proposed modifications, and I did so on behalf of Star."^{48/}

Mr. Nelson has explained that the point he thought he was making -- and the point on which he was focusing when he reviewed and signed that testimony -- was that direct communication between USCC and SJI on La Star matters was quite limited as compared to the more usual communication through La Star's attorney, Arthur Belendiuk, which he had described in the preceding paragraph of his written testimony. TDS/USCC Ex. 2, ¶ 72. Mr. Nelson believed then, and still believes, that the testimony truthfully and accurately made that fundamental point. From that perspective, the testimony was not intended to overstate the functioning of the Management Committee or the extent of Mr. Nelson's communication with the Committee.

^{48/} B/P, pp. 11-12, quoting Nelson August 1990 Declaration, p. 3.

61. As discussed below, Mr. Nelson, in hindsight, recognizes that the testimony unintentionally implied that he participated in the conference call concerning settlement.^{49/} Nevertheless, based on the undisputed facts, the separate sentences of the testimony accurately described the conference calls in which the principals of SJI and the principals of USCC participated. First, sentences [2] through [4] accurately described the undisputed material facts relating to the conference call regarding settlement: La Star had to present a single settlement proposal to NOCGSA; a conference call was needed so the parties could discuss a variety of options; and the proposal adopted by La Star to present to NOCGSA was the proposal suggested by Kit Crenshaw. Second, sentences [5] through [7] accurately set forth the course of events leading up to Mr. Nelson's signing the amendment to the Joint Venture

^{49/} In mid-1989, a settlement conference between representatives of La Star and representatives of NOCGSA was scheduled with the FCC staff. On June 28, 1989, a conference call was held between representatives of SJI and representatives of USCC to agree on La Star's settlement position to be advanced at that meeting. TDS/USCC Ex. 3, ¶ 21; TDS/USCC Ex. 4, ¶ 10. Although he did not actually participate in the conference call, Mr. Nelson was told about the call. TDS/USCC Ex. 2, ¶ 42. Mr. Carlson, Michael G. Hron (corporate counsel for TDS and USCC), John Brady, Pat Brady, Mr. Crenshaw, and possibly Mr. Belendiuk participated in that call. Mr. Crenshaw advanced a settlement proposal upon which all the parties agreed. TDS/USCC Ex. 3, ¶ 21; TDS/USCC Ex. 4, ¶ 10. It was explained to Mr. Nelson after the conference call that various settlement options were discussed and that SJI and USCC had agreed to adopt as La Star's position the option suggested by Mr. Crenshaw. TDS/USCC Ex. 2, ¶ 42.

Agreement on behalf of USCC.^{50/} Each of those conference calls had been described to Mr. Nelson, and when he submitted that testimony, he considered that paragraph to be accurate.

62. Mr. Nelson acknowledges that, with the benefit of hindsight, he should have been more precise because the use of the word "I" in the first sentence of the quoted paragraph could have left the incorrect impression that he personally participated in the telephone conference calls described in that paragraph when it was other representatives of TDS and USCC who participated in the calls. *Id.* ¶ 73. He similarly recognizes that any ambiguity could have been eliminated if he had referred

^{50/} After the FCC issued the La Star HDO on May 31, 1990, Mr. Belendiuk recommended that it would be in La Star's best interests to amend the original 1983 Joint Venture Agreement to address some of the issues raised in the La Star HDO. TDS/USCC Ex. 1, ¶ 22. Mr. Belendiuk called SJI and discussed at length the provisions that should be amended. *Id.* ¶ 24; TDS/USCC Ex. 4, ¶ 11; TDS/USCC Ex. 3, ¶ 22. Mr. Belendiuk then spoke to Mr. Naftalin and Mr. Nelson about his recommended amendments and told them that he was sending Mr. Nelson a draft amendment. TDS/USCC Ex. 1, ¶ 24; TDS/USCC Ex. 2, ¶ 43. A few days later, on June 15, 1990, a conference call was held among Mr. Belendiuk, John Brady, Mr. Crenshaw, Mr. Carlson, and Mr. Naftalin regarding the amendments proposed by Mr. Belendiuk. TDS/USCC Ex. 1, ¶ 24; TDS/USCC Ex. 11, ¶ 14; TDS/USCC Ex. 3, ¶ 23; TDS/USCC Ex. 4, ¶ 11. When Mr. Belendiuk recommended that the changes be made, Mr. Carlson and USCC agreed to do so. TDS/USCC Ex. 1, ¶ 22, 24; TDS/USCC Ex. 11, ¶ 14. Although Mr. Nelson did not participate in that conference call, he was informed of the call's substance. TDS/USCC Ex. 2, ¶ 43-44; see TDS/USCC Ex. 9, ¶ 8. Mr. Belendiuk also told Mr. Nelson that the amendment would be coming to Mr. Nelson for signature and that he should review and sign the amendment. TDS/USCC Ex. 2, ¶ 44. After discussing the amendment with USCC's counsel, Mr. Nelson signed the amendment, which was returned to Mr. Belendiuk by letter dated June 18, 1990. TDS/USCC Ex. 2, ¶ 47 & Tab P, pp. 9-16.