

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re:)
)
 RONALD BRASHER, LICENSEE OF)
 PRIVATE LAND MOBILE STATIONS)
 WPLQ202, WPCG967, WPL0495,)
 WPKH771, WPKI739, WPKI733,)
 WPKI707, WIL990, WPLQ45,)
 WPLY658, WPKY903, WPKY901,)
 WPLZ533, WPKI762 AND WPDU262,)
 DALLAS/FORT WORTH, TEXAS, et al.)

No. 00-156

WITNESSES: DAWN DANIELS ROSS
 GAIL BOLSOVER
 JULIE C. EDISON
 RONALD BRASHER

APR 2 3 13 PM '00
 FCC-0ALJ RGD

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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re:)	
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Federal Communications Commission
445 12th Street, S.W.
Room TW-A-363
Washington, D.C. 20554

Friday,
March 9, 2001

The parties met, pursuant to the notice of the
Judge, at 9:05 a.m.

BEFORE: HONORABLE ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

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Patricia Brasher, Estate of O.C.
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2252

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>	<u>VOIR DIRE</u>
Dawn Daniels Ross	2254	2275 2284	2288	2293	
Gail Bolsover	2295	2307 2347	2358 2370	2364 2374 2377	
Julie C. Edison	2381				2389
Ronald Brasher	2418 2423	2434 2439			2420

E X H I B I T SIDENTIFIEDRECEIVEDREJECTEDRonald Brasher/Patricia Brasher:

RB/PB-4	Prev.	2423
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RB/PB-13	2380	
RB/PB-14	2380	

Judge's:

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P R O C E E D I N G S

(9:05 a.m.)

1
2
3 JUDGE STEINBERG: We are on the record.

4 Mrs. Ross, could you stand and raise your right
5 hand, please?

6 Whereupon,

7 DAWN DANIELS ROSS

8 having been first duly sworn, was called as a
9 witness herein and was examined and testified as follows:

10 JUDGE STEINBERG: Please be seated.

11 Mr. Kerben, do you want to enter your appearance
12 now?

13 MR. KERBEN: Yes, I do.

14 Mr. Kerben, representing PCIA.

15 JUDGE STEINBERG: And have you read 1.27 of the
16 Commission's rules?

17 MR. KERBEN: Yes, Your Honor.

18 JUDGE STEINBERG: So that you're familiar with
19 what your role is here today?

20 MR. KERBEN: Yes, Your Honor.

21 JUDGE STEINBERG: Okay. Thank you.

22 Mr. Kellett?

DIRECT EXAMINATION

23
24 BY MR. KNOWLES-KELLETT:

25 Q Ms. Ross, would you please state your full name

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1 for the record?

2 A Dawn Daniels Ross.

3 Q Okay. And what is your maiden name?

4 A Daniels.

5 Q Okay. And when were you married?

6 A In '95.

7 Q Okay. Did you continue after that time to use the
8 name Daniels at work?

9 A Yes.

10 Q Okay. What's your address?

11 A 8488 Rainbow Bridge Lane, Springfield, Virginia
12 22153.

13 Q Where are you employed?

14 A PCIA.

15 Q Could you tell us what PCIA stands for?

16 A Personal Communications Industry Association.

17 Q Okay. How long have you been employed with PCIA?

18 A Thirteen years.

19 Q During that entire time, was it called PCIA?

20 A No. It was formerly known as NABER, National
21 Association of Business and Educational Radio.

22 Q Okay. Is it correct that NABER and PCIA merged at
23 some point?

24 A That is correct.

25 Q And when was that?

1 A Late '95.

2 Q Okay. Could you explain what PCIA/NABER is?

3 A It's the trade association which represents the
4 wireless telecommunications industry.

5 Q Does it also serve as a frequency coordinator?

6 A It serves as a frequency coordinator. Previously,
7 as NABER, it was for the business radio service. After
8 reforming, it was for the industrial business pool.

9 Q Okay. Would you have a role in the 470 to 512
10 megahertz coordination?

11 A Yes.

12 Q Could you explain how it works when 470 to 512
13 megahertz business applicant applies for an FCC
14 authorization?

15 A As far as the coordination process goes?

16 Q Yes.

17 A We would review the information based on their
18 specific site information to determine if there is a
19 frequency available. Once a channel reaches a loading limit
20 of 90 units, the channel is not available for reassignment
21 within 40 miles.

22 Q Okay. And to perform this function, first, what
23 do you get from the applicant?

24 A We would get a completed application form, a Form
25 600.

1 Q Okay. And would that include the frequency?

2 A Sometimes yes and sometimes no.

3 Q Okay. So if it didn't include a frequency, they
4 would be asking you to find an available frequency?

5 A That's correct.

6 Q Okay. And then you maintain your own database?
7 Is that correct?

8 A No. We do have an internal database that we do
9 maintain to some degree for historical purposes, but we do
10 work off of the FCC database.

11 Q Okay. Has it always been that way?

12 A No.

13 Q When did it change?

14 A It changed back in '96 or '97.

15 Q Okay. And prior to that, you had your own
16 database?

17 A We maintained our own database. We did not have
18 access as a download feature for an FCC database.

19 Q Okay. And in that database, what do you track?

20 A We would track --

21 JUDGE STEINBERG: Let me just -- the time periods
22 here are important, so what do you track now or what did you
23 track then?

24 MR. KNOWLES-KELLETT: Back in the '96 timeframe.

25 JUDGE STEINBERG: Yes. I mean, if you can preface

1 your questions or instruct the witness that all the
2 questions are to be answered as of the '95-'96 time period,
3 that's fine, but I don't know whether you're asking about
4 today or two years ago.

5 BY MR. KNOWLES-KELLETT:

6 Q All of my questions are about the '95-'96 time
7 period, unless I otherwise specify, okay?

8 A Okay.

9 Q Okay. In '95-'96, did you track all pending
10 applications and all licenses?

11 A That we had processed, yes.

12 Q Okay. When you recommend a frequency, if there's
13 a pending application for that frequency, is that frequency
14 deemed available?

15 A Not if it is pending at the FCC. No. It's not
16 deemed available.

17 Q Okay.

18 A Because we do process applications in date order
19 of receipt.

20 Q Okay. So assigned frequencies and anything on a
21 pending application is not available. Is that correct?

22 A Correct.

23 Q Okay. Are you familiar with the regulatory
24 classification commercial mobile radio service?

25 A Yes.

1 Q And the regulatory classification private mobile
2 radio service?

3 A Yes.

4 Q Okay. I'd like you to turn Exhibit 3. It's in
5 the book with the lot of tabs. Would you look at page 3 of
6 that? There is an application. I think you will find it's
7 a 470 to 512 application and on the front page in item 24,
8 the status is P for profit and 25 is no for interconnect.

9 From that information, can you discern whether it
10 is private mobile radio service or commercial mobile radio
11 service?

12 A It's private.

13 Q Okay. And if the status is yes for interconnect,
14 what would it be?

15 A It would be commercial.

16 Q Okay. Are you familiar with section 90.313 of the
17 Commission's rules? In particular, that's the limitation on
18 the number of 470 to 512 channels that applicants can get.

19 A Yes.

20 Q Okay. Is there a PCIA policy implementing that?

21 A Well, we conform to the FCC rules.

22 Q Okay. And how do you do that? Do you understand
23 what I mean by the question?

24 A The rules indicate --

25 MR. ROMNEY: Excuse me. I'm sorry. Are we still

1 talking about 1995, 1996?

2 MR. KNOWLES-KELLETT: 1995, 1996.

3 JUDGE STEINBERG: Okay. And what was the rule
4 section again?

5 MR. KNOWLES-KELLETT: 90.313.

6 JUDGE STEINBERG: Okay. That's what I thought you
7 said.

8 BY MR. KNOWLES-KELLETT:

9 Q Would it be helpful if you could look at the rule?

10 A Yes.

11 MR. KNOWLES-KELLETT: Okay.

12 JUDGE STEINBERG: And let the record reflect that
13 Mr. Kellett is showing Ms. Ross a copy of the 1996 --

14 Is that the 1996 rules?

15 MR. KNOWLES-KELLETT: As of October 1996.

16 Your Honor, I think the Court can take judicial
17 notice if anybody says there a change.

18 JUDGE STEINBERG: Okay.

19 BY MR. KNOWLES-KELLETT:

20 Q Okay. I turn your attention to the provision in
21 90.313(c) that begins with the sentence "Until" -- I'm
22 sorry.

23 (Pause.)

24 Q Could you read the sentence in 90.313(c) that you
25 recognize as pertinent to a limit on the number of 470 to

1 512 applications?

2 A "A licensee will be required to show that an
3 assigned frequency pair is at full capacity before it may be
4 assigned a second or additional frequency pair."

5 Q Okay. And as a result of this, for new applicants
6 would PCIA only coordinate one application at a time?

7 A We would recommend one frequency pair at a time,
8 unless a justification for additional frequency was
9 provided.

10 Q Okay. And what would be required to make just a
11 justification?

12 A We would request a signed statement from the
13 applicant that they have in excess of 90 mobile units.

14 Q In operation?

15 A In operation.

16 Q Okay. So if an applicant had a potential new
17 customer, they would have difficulty getting multiple
18 channels for that customer.

19 MR. ROMNEY: Objection. Leading, Your Honor.

20 MR. KNOWLES-KELLETT: If you know.

21 JUDGE STEINBERG: Well, I don't think it's
22 leading. It's a question if, then what.

23 MR. KNOWLES-KELLETT: Standard policy. I don't
24 know.

25 JUDGE STEINBERG: Well, why don't you just phrase

1 it in another way and then that would take care of the
2 problem.

3 BY MR. KNOWLES-KELLETT:

4 Q So if an applicant didn't already have the mobiles
5 in operation, they only had a potential new applicant, would
6 they be able to get more than one channel?

7 JUDGE STEINBERG: You mean a potential new client.

8 MR. KNOWLES-KELLETT: Potential new client.

9 BY MR. KNOWLES-KELLETT:

10 Q Would they be able to get more than one channel?

11 A No. It was our interpretation that you had to
12 have the loading at that time that you were applying for the
13 license.

14 Q Okay. I'd like you to turn to Exhibit 66 and on
15 Exhibit 66, I'd like you to turn to page 4.

16 (Pause.)

17 Q I'll tell you there's been testimony that these
18 were ten pending applications and the PCIA control numbers
19 were written on this page 4 and 5.

20 Do you see those?

21 A Yes.

22 Q Looking at those, can you tell that they were all
23 filed together in a single day?

24 A Yes, they were.

25 Q Okay. And can you explain why? How you know

1 that?

2 A We have a nine-digit control number system. The
3 first two digits represent the calendar year, the next three
4 digits represent the Julian date and then the last four
5 digits are the sequential numbers of applications received.

6 Q Okay. If you knew that David Brasher and D.L.
7 Brasher, the ones listed at 2 and 4, were the same
8 applicant, would they have been coordinated?

9 A They would have been handled in application order,
10 but, yes.

11 Q If you knew they were the same applicant, would
12 you have only coordinated one of the two applications?

13 A No.

14 Q And why would that be?

15 A Because they were separate applications.

16 Q Okay. But if they were for separate frequencies
17 at the same location, separate 470 to 512 frequencies at the
18 same location.

19 A Then we would still process them. We would be
20 assuming that they were asking for 90 separate units with
21 each application.

22 Q Okay. I don't understand. If there was no
23 demonstration on loading, you could just put separate
24 applications in under the same person's name?

25 A Correct.

1 Q And would you leave it to the Commission to impose
2 the 90.313 limit?

3 A Yes.

4 Q Okay. Okay. If I told you O.C. Brasher, the
5 application number 8, was dead, would you have coordinated
6 that application?

7 A No.

8 Q Okay. If you had known it was signed by the
9 executor of his estate, would the answer be the same? He's
10 still dead.

11 A Yes. No.

12 MR. ROMNEY: Objection, Your Honor. Leading the
13 witness.

14 THE WITNESS: I don't know.

15 MR. KNOWLES-KELLETT: Okay.

16 JUDGE STEINBERG: Sustained.

17 MR. KNOWLES-KELLETT: I'll ask it again.

18 BY MR. KNOWLES-KELLETT:

19 Q If I told you O.C. Brasher was dead and that this
20 application was signed by the executor of the estate, would
21 you have coordinated it?

22 A I probably would have sought some sort of guidance
23 from the Commission as to whether or not it was an
24 appropriate signature.

25 Q Okay. If I told you Ruth Bearden was dead, would

1 you have coordinated it?

2 A No.

3 Q I'd like you to turn to Exhibit No. 9.

4 JUDGE STEINBERG: But let me ask you, could you
5 list David Brasher, for example, ten times and you would
6 have coordinated all ten applications?

7 THE WITNESS: Yes.

8 JUDGE STEINBERG: And then it would have been --
9 after that point, it would have been the Commission's
10 business as to what to do with it?

11 THE WITNESS: Correct. They are supposed to send
12 a statement to the Commission indicating that they had
13 constructed and loaded the system.

14 JUDGE STEINBERG: Okay. They being --

15 THE WITNESS: The licensees.

16 JUDGE STEINBERG: So what do you mean by
17 coordinating? A basic question.

18 THE WITNESS: A basic question is that we look for
19 the most appropriate frequency based on the technical
20 parameters of the application and then review the
21 application itself for completeness and compliance with FCC
22 rules.

23 JUDGE STEINBERG: And then what do you do? You
24 certify it?

25 THE WITNESS: We certify it and then we forward it

1 to the FCC.

2 JUDGE STEINBERG: What does it mean when you
3 certify?

4 THE WITNESS: It means to PCIA that the
5 application is complete and compliant with FCC rules.

6 JUDGE STEINBERG: And then do you know -- and then
7 you forward it to the Commission?

8 THE WITNESS: We forward it to the Commission.

9 JUDGE STEINBERG: Do you have personal knowledge
10 as to what the Commission does with it, once the Commission
11 gets it?

12 THE WITNESS: It is my understanding that it is
13 put on public record for a certain number of days and then
14 they -- they reviewed the information electronically. I am
15 not sure what they do with the hard copy application.
16 I would imagine they would store it.

17 JUDGE STEINBERG: Okay. So then let's say -- I'm
18 using David's name because it's the first name on here.

19 THE WITNESS: Right.

20 JUDGE STEINBERG: Let's say you got five
21 applications from David Brasher at the same address and you
22 said you would coordinate all five of them.

23 THE WITNESS: Correct.

24 JUDGE STEINBERG: And you would -- if he didn't
25 find five frequencies, you would find five frequencies.

1 THE WITNESS: If they were available. Yes.

2 JUDGE STEINBERG: If they were available. And
3 then you would certify them.

4 THE WITNESS: Yes.

5 JUDGE STEINBERG: And then you would forward them
6 to the Commission.

7 THE WITNESS: Correct.

8 JUDGE STEINBERG: And the Commission would put
9 them on public notice.

10 THE WITNESS: Correct.

11 JUDGE STEINBERG: And presumably grant them?

12 THE WITNESS: Correct.

13 JUDGE STEINBERG: Or they could grant them.

14 THE WITNESS: They could grant them. They could
15 send it back for additional information or clarification.
16 Yes.

17 JUDGE STEINBERG: Now, would David Brasher's --
18 would all five applications have to have a certification or
19 a signed statement that they had over 90 mobiles in
20 operation?

21 THE WITNESS: Well, no, because they were not
22 requesting multiple frequencies on the same application.

23 JUDGE STEINBERG: Okay. So it's only when you
24 have one application requesting --

25 THE WITNESS: Multiple frequencies.

1 JUDGE STEINBERG: Multiple frequencies. But --
2 okay. Now, go back. Do you have number 3 there? What page
3 on number three tells me -- well, what part of the
4 application tells me what they're applying for?

5 THE WITNESS: Page number 8, schedule G.

6 JUDGE STEINBERG: Okay. That's the circle on the
7 bottom?

8 THE WITNESS: Correct.

9 JUDGE STEINBERG: And so they would be applying --
10 oh, I see. There's only one frequency listed.

11 THE WITNESS: Correct.

12 JUDGE STEINBERG: But it's ABGG.

13 THE WITNESS: Right.

14 JUDGE STEINBERG: Those are the locations?

15 THE WITNESS: Right. That's a private carrier
16 system with a control station and mobiles with talk around.

17 JUDGE STEINBERG: And the column G3 is number of
18 units and that tells you they're applying for 90.

19 THE WITNESS: Correct.

20 JUDGE STEINBERG: On that frequency.

21 THE WITNESS: Correct.

22 JUDGE STEINBERG: So if in this applications
23 someone had asked for 484.0125 and 484.0126 and 0127, then
24 you would need the statement that the system was loaded?

25 THE WITNESS: Correct.

1 JUDGE STEINBERG: But since this was only applying
2 for one frequency, you didn't need that statement?

3 THE WITNESS: No.

4 JUDGE STEINBERG: And from PCIA's perspective, you
5 see the licensing name is O.C. Brasher?

6 THE WITNESS: Correct.

7 JUDGE STEINBERG: And forget about what his life
8 status was then, if he wanted to -- and that wasn't meant to
9 be funny, but I couldn't think of anything else to say -- if
10 that individual wanted to, he could file three or four
11 separate applications specifying only one frequency per
12 application.

13 THE WITNESS: Correct.

14 JUDGE STEINBERG: And PCIA would process that.

15 THE WITNESS: That's correct.

16 JUDGE STEINBERG: And if everything was complete
17 and accurate and the frequencies were available, you would
18 certify it.

19 THE WITNESS: That's correct.

20 JUDGE STEINBERG: Thank you.

21 BY MR. KNOWLES-KELLETT:

22 Q Okay. Turn to the last two pages of that exhibit,
23 if you would.

24 JUDGE STEINBERG: Which exhibit?

25 MR. KNOWLES-KELLETT: Exhibit 3, the one we were

1 on.

2 BY MR. KNOWLES-KELLETT:

3 Q Is that the certificate that PCIA adds to the
4 application before it goes to the Commission?

5 A No.

6 Q Okay. Could you explain what this is?

7 A Those two are certificates of compliance and those
8 are required for 470 stations to make sure that they do not
9 interfere with broadcast TV stations.

10 Q Okay. And does PCIA add them?

11 A Yes.

12 Q Okay. So when you received this application from
13 the applicant, you would have gotten the pages up until then
14 and then added these two pages. Is that correct?

15 A Correct. Yes.

16 Q Please turn to Exhibit No. 9. Okay. I'd like you
17 to turn to page 5. Do you see the control number at the
18 bottom of the page?

19 A Yes.

20 Q Okay. Who puts that control number on the
21 application?

22 A That would be the coordinator.

23 Q Okay. And is that the same as the numbers we
24 reviewed in Exhibit 66, with the year, day, et cetera?

25 A Yes, it is.

1 Q And what does it mean where it's stamped there
2 PCIA certified?

3 A That's our certification stamp.

4 Q Okay. And that means that the frequency proposed
5 in the application is appropriate?

6 A Correct.

7 Q Okay. Can you tell from page 3 of the application
8 when this was filed with the FCC?

9 A It appears to be July 16, 1996.

10 Q And how do you tell that?

11 A That would be the FCC Mellon date stamp in the
12 upper right-hand corner.

13 Q Okay. And why FCC Mellon? Do you know?

14 A Because this particular application had an FCC fee
15 and feeable applications are forwarded to the Mellon Bank to
16 handle the filing fee deposit and then they are forwarded to
17 Gettysburg for licensing.

18 Q Okay. I'd like you to take note of that date,
19 July 16, 1996, and I'd like you to take note of the control
20 number, 961760089.

21 JUDGE STEINBERG: Do you have a piece of paper to
22 write this stuff down?

23 MR. KNOWLES-KELLETT: You can just keep your
24 finger there if you want.

25 THE WITNESS: Okay.

1 BY MR. KNOWLES-KELLETT:

2 Q And I'd like you to turn to Exhibit 14. Do you
3 recognize this exhibit?

4 A No.

5 Q Okay. Do you recall that the other day I faxed
6 you a fax and asked you if you could check to see if you had
7 received it?

8 A Yes.

9 Q Okay. Do you recognize it as that document?

10 A Yes, I do.

11 Q Okay. Do you recall ever seeing it before the
12 other day?

13 A No.

14 Q Do you have any record of receiving it before the
15 other day?

16 A No.

17 Q Would you have kept any record of receiving it?

18 A There may have been some transaction record with
19 our fax machine, but other than that, no.

20 JUDGE STEINBERG: So you don't know from personal
21 knowledge whether you received this or not.

22 THE WITNESS: I don't remember.

23 BY MR. KNOWLES-KELLETT:

24 Q Okay. On the second page, do you see the date of
25 the fax?

1 A Yes, I do.

2 Q It's July 30, 1996?

3 A Yes.

4 Q Okay. And the date of the second page of the
5 letter is July 30, 1996?

6 A Yes.

7 Q And do you see on the fax it's a request to cancel
8 a certain application?

9 A Yes.

10 Q Am I characterizing that correctly?

11 A Yes.

12 Q Okay. Do you recall whether you canceled that
13 particular application?

14 A No, I do not.

15 Q You do not recall?

16 A I do not recall.

17 Q Okay. Now, looking back at the other one, do you
18 see that -- if you can compare that control number,
19 961760089, back with the control number on page 5 of Exhibit
20 9 and you'll find that they're the same, I believe.

21 A Yes, they are the same.

22 Q Do you see that this application was received by
23 the Commission on July 16, 1996?

24 A Yes.

25 Q Okay. So if the application had been received by

1 the Commission on July 16, 1996, what would you have done
2 with a fax of this type on July 30, 1996?

3 A I would have called the person who had sent the
4 fax to inform them that the application was no longer in our
5 office and that if they wanted to cancel the application,
6 they would need to notify the Commission.

7 Q Okay. Is there anything else you might have done?

8 A No.

9 (Pause.)

10 JUDGE STEINBERG: Let the record reflect that the
11 witness is looking at EB Exhibit 68.

12 Let's go off the record.

13 (A brief recess was taken.)

14 JUDGE STEINBERG: Back on the record.

15 BY MR. KNOWLES-KELLETT:

16 Q I'd like you to take a look at the application.

17 JUDGE STEINBERG: That's EB Exhibit 68.

18 MR. KNOWLES-KELLETT: Right.

19 THE WITNESS: Okay.

20 BY MR. KNOWLES-KELLETT:

21 Q Particularly page 6 of the application.

22 A Yes.

23 Q Okay. Do you see it's an application for 484.0125
24 and 427.0125 frequency pair at Allen, Texas?

25 A Yes.

1 Q I'd like you to look at the letter on the last
2 page of the application.

3 JUDGE STEINBERG: Of the exhibit?

4 MR. KNOWLES-KELLETT: Of the exhibit. I'm sorry.

5 BY MR. KNOWLES-KELLETT:

6 Q And I'd like you to take just a minute and tell me
7 if there's anything on that exhibit that indicates that it
8 goes with this application.

9 JUDGE STEINBERG: That the letter on page 9 goes
10 with the application on the remaining pages?

11 MR. KNOWLES-KELLETT: Exactly. Thank you for
12 straightening that one out.

13 (Pause.)

14 THE WITNESS: It doesn't appear to be associated
15 with this application. None of the frequencies match up.

16 MR. KNOWLES-KELLETT: Okay. Thank you.

17 Pass the witness, Your Honor.

18 JUDGE STEINBERG: Mr. Romney?

19 MR. ROMNEY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. ROMNEY:

22 Q Ms. Ross, my name is Mark Romney and I'm one of
23 the attorneys that represents Ronald Brasher, Patricia
24 Brasher and DLB Enterprises.

25 I'll ask you to take in front of you Exhibit