

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of)
)
Ronald Brasher)
 Licensee of Private Land Mobile Stations)
 WPLQ202, KCG967, WPLD495, WPKH771,)
 WPKI739, WPKI733, WPKI707, WIL990,)
 WPLQ475, WPLY658, WPKY903, WPKY901,)
 WPLZ533, WPKI762, and WPDU262)
 Dallas/Fort Worth, Texas)
)
Patricia Brasher)
 Licensee of Private Land Mobile Stations)
 WPJI362, WPKY900, and WPLD570)
 Dallas/Fort Worth, Texas)
)
David Brasher)
 Licensee of Private Land Mobile Stations)
 WPBU651 and WPJR757)
 Dallas/Fort Worth, Texas)
)
D.L. Brasher)
 Licensee of Private Land Mobile Station WPJR750)
 Dallas/Fort Worth, Texas)
)
O.C. Brasher)
 Licensee of Private Land Mobile Station WPJR761)
 Dallas/Fort Worth, Texas)
)
Metroplex Two-Way Radio Service)
 Licensee of Private Land Mobile Stations)
 WPHS735, WPKP673, WPKM797,)
 WPLZ841 and WPJR754)
 Dallas/Fort Worth, Texas)
)

EB DOCKET NO. 00-156 ✓

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DLB Enterprises, Inc.)	
Licensee of Private Land Mobile Stations)	
WPKM796, WPKL830, WPJY510, WPLU490,)	
WPBH830, WPKP667, WPLY713, WPMH354,)	
WPMH477, and WPKY978,)	
Dallas/Fort Worth, Texas)	
WNAH223)	
Cleora ,Oklahoma)	
)	
DLB Enterprises, Inc.,)	
Applicant for Conventional Industrial/Business)	File Nos. AO17774,
Private Land Mobile Licenses)	AO20241, AO19157
Dallas, Texas)	
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Applicant for Conventional Industrial/Business)	File No. AO18555.
Private Land Mobile Licenses)	
Crowley, Texas)	
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Applicant for Trunked Industrial/Business)	File No. AO20755.
Private Land Mobile Licenses)	
Crowley, Texas)	
)	
Applicant for Assignment of Private Land Mobile)	File No. D110637
Station WPJR740 from Jennifer Hill)	
Dallas, Texas)	
)	
Applicant for Assignment of Private Land Mobile)	File No. D113240
Stations from Ronald Brasher (WPKI707,)	
WPKI739, WPKI733 and WPLQ475), Norma)	
Sumpter (WPJR739), D.L. Brasher (WPJR750),)	
David Brasher (WPJR757), Jim Sumpter)	
(WPJR725), Jennifer Hill (WPJR740),)	
Metroplex Two-Way Radio Service (WPJR754),)	
O.C. Brasher (WPJR761), Melissa Sumpter)	
(WPJS437) Dallas, Texas)	
)	
Applicant for Assignment of Private Land Mobile Station)	File No. D113242
)	
Applicant for Modification of Private Land Mobile)	File No. D113241
Stations WPKM796, and WPKL830, and)	
Assignment of Private Land Mobile)	
Stations WPKI733, WPLQ475, WPKI707)	
and WPKI739 from Ronald Brasher)	

and Assignment of Private Land)
Mobile Station WPKM797 from Metroplex)
Dallas, Texas)

To: Administrative Law Judge
Arthur I. Steinberg

ENFORCEMENT BUREAU'S

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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Federal Communications Commission
2025 M Street, N.W., Suite 8308
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September 14, 2001

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SUMMARY

The evidence demonstrates that the Commission should revoke the licenses and deny the applications of Ronald, Patricia and David Brasher, as well as those of the corporation they control and operate, DLB Enterprises, Inc. (d/b/a Metroplex Two-Way Radio) ("DLB"). In addition, the Commission should revoke the license of O.C. Brasher, who is deceased. Finally, because DLB controlled stations licensed to others, contrary to 47 U.S.C. § 310(d), and those violations were intentional and continuous, the maximum forfeiture of \$82,500 is warranted

Beginning in 1996, Ronald and Patricia Brasher, with the assistance of David Brasher and Diane Brasher (collectively, the "Brashers"), by and through DLB, abused the Commission's processes by obtaining private land mobile station licenses under false pretenses. Specifically, the Brashers used the names of relatives, including two who were deceased when the applications were filed and the licenses were granted. Ronald Brasher, with Patricia's knowledge and acquiescence, forged the relatives' signatures to obtain licenses DLB needed to serve new customers. Neither the deceased nor the living relatives ever actively participated in the construction or operation of their respective stations. Moreover, after a competitor complained about, *inter alia*, DLB's unauthorized frequency grab, DLB falsely reported to the Commission in elaborate detail that it was managing the licenses under the active supervision of the named licensees. DLB continued to lie and/or provide incomplete information in responding to subsequent Commission inquiries, and Ronald, Patricia and David gave false testimony during the hearing itself.

Thus, the record in this proceeding demonstrates that the Brashers and DLB are not qualified to remain Commission licensees. They forged the names of others to license applications, thus abusing the Commission's processes and repeatedly misrepresented facts and lacked candor in their dealings with the Commission. In addition, DLB was the real party-in-interest to numerous applications bearing the names of others and controlled stations licensed to others in violation of the Communications Act.

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Dallas/Fort Worth, Texas)	
)	
<i>Et al</i>)	
_____)	

To: Administrative Law Judge
Arthur I. Steinberg

**ENFORCEMENT BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. PRELIMINARY STATEMENT

1. By *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, 15 FCC Rcd 16326 (2000) (“*OSC/HDO*”), the Commission instituted a proceeding to determine whether the licenses held by Ronald Brasher, Patricia Brasher, David Brasher, D.L. Brasher, Carolyn S. Lutz, O.C. Brasher, Jim Sumpter, Norma Sumpter, Melissa Sumpter, Jennifer Hill, Metroplex Two-Way Radio Service, and DLB Enterprises, Inc. (the “designated parties”) should be revoked. The Commission also designated for hearing pending applications filed by DLB Enterprises, Inc.

2. In paragraph 11 of the *OSC/HDO*, the Commission specified the following issues for resolution in this proceeding:

- (a) To determine whether any of the above-captioned licensees made misrepresentations to, and/or lacked candor before, the Commission in applications and/or responses to Commission inquiries;
- (b) To determine whether any of the above-captioned licensees were undisclosed real-parties-in-interest or willfully and/or repeatedly violated § 310(d) of the Communications Act of 1934, as amended, by engaging in unauthorized transfers of control involving their respective stations;
- (c) To determine whether any of the captioned parties abused the Commission's processes in connection with the filing of applications on behalf of O.C. Brasher, Ruth I. Bearden, Jim Sumpter, Norma Sumpter, Melissa Sumpter or Jennifer Hill;
- (d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the above-captioned licensees are basically qualified to be and/or remain Commission licensees;
- (e) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether any or all of the above-captioned licenses should be revoked;
- (f) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether any or all of the above-captioned applications should be granted.

3. Paragraph 12 of the *OSC/HDO* directed the Presiding Judge to determine whether an order of forfeiture should issue against any designated party for willfully and/or repeatedly violating Section 310(d) of the Act.

4. Paragraph 15 of the *OSC/HDO* placed the burden of the introduction of evidence and the burden of proof as follows:

[P]ursuant to § 312(d) of the Communications Act of 1934, as amended, 47 U.S.C. §312(d) and § 1.91(d) of the Commission's Rules, 47 C.F.R. § 1.91(d), the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Enforcement Bureau as to the issues at ¶ 11 (a)-(e) and ¶ 12, above, and that, pursuant to 47 U.S.C. Section 309(e) and Section 1.254 of the Commission's rules, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicants as to the issues at ¶ 11(f).

5. Jim Sumpter, Norma Sumpter, Jennifer Sumpter Hill, Melissa Sumpter Ellington (the "Sumpters") and Carolyn Lutz each waived his or her right to a hearing. The Presiding Judge severed their licenses from this proceeding and certified matters relating to their licenses to the Commission. *Memorandum Opinion and Order*, FCC 00M-58 (released October 26, 2000). Nevertheless, the Sumpters and Ms. Lutz testified as fact witnesses at the hearing in this matter.

6. A hearing on all issues regarding the remaining licensees was held in Washington, D.C. from February 26, 2001 through March 9, 2001.¹ The record in this proceeding was closed on March 9, 2001. (Tr. 2457-58)

¹ The following witnesses testified at the hearing in this matter: Ronald Brasher, Tr. 45-676, 2418-2448; Thomas Lewis, Tr. 680-749; Patricia Brasher, Tr. 751-899; David Brasher, Tr. 905-1044; Jennifer Sumpter Hill, Tr. 1045-1123; Carolyn Susan Lutz, Tr. 1132-1307; Melissa Sumpter Ellington, Tr. 1308-1439; Steven Hill, Tr. 1444-1527; Diane Brasher, Tr. 1534-1617; John Black, Tr. 1622-1735; Jim Sumpter, Tr. 1737-1979; Norma Sumpter, Tr. 1980-2247; Dawn Daniels Ross, Tr. 2254-2294; Gail Bolsover, Tr. 2295-2377; and Julie C. Edison, Tr. 2381-2417. Where multiple witnesses testified to the same facts, the transcript cites are separated by semi-colons, e.g., "(Tr. 61; 753)," signals that two witnesses, in this example Ronald and Patricia Brasher, testified regarding the proposed finding of fact.

II. PROPOSED FINDINGS OF FACT

A. Background

7. Patricia Brasher (“Patricia”) and her husband, Ronald Brasher (“Ronald”), own DLB Enterprises, Inc., d/b/a Metroplex Two-Way Radio (DLB). (Tr. 48, 168; 753-54) Patricia owns 60 percent of the stock of DLB and Ronald owns the remaining 40 percent. (Tr. 753-54) Patricia founded DLB in 1982 and serves as its president. (Tr. 751-52) Ronald is a vice president and has been working for DLB since 1984. (Tr. 56-7) David Brasher (“David”) is Patricia and Ronald’s son. David and his wife, Thelma Diane Brasher (“Diane”), are also officers of DLB. (Tr. 52; 907-08; 1534, 1539) David has been a vice president of DLB since the company’s inception and an employee since April 1997. (Tr. 52; 906-08, 941; 1535) Diane has been DLB’s corporate secretary since the company’s inception and a full-time employee since April 1984. (Tr. 1538-39) Collectively, Patricia, Ronald, David and Diane make all major decisions for DLB.² (Tr. 78-9; 771; 973; 1550)

8. Patricia and Diane have primary responsibility for the office staff. (Tr. 168; 775-77; 1557) Prior to November 2000, Ronald and David supervised the sales and service staff. (Tr. 166-68; 776) Ronald had primary responsibility for licensing. (Tr. 942; 1557) David and Diane currently manage DLB’s day-to-day operations. (Tr. 970; 1564)

² Both Patricia and David testified that Ronald and Patricia, as shareholders, will always have a hand in operating the business and that they have a right to be included in the decision making.

9. DLB provides a two-way radio service, and it sells, leases, services and repairs two-way radios. (Tr. 61; 763) DLB employs approximately 15 people, and its gross revenue is approximately \$2 million per year. (Tr. 60, 64) In addition to operating its own stations, DLB has operated and “managed” a number of stations that are licensed to others. (EB Ex. 17, pp. 2-3) The stations managed by DLB included all of the captioned stations. (*Id.*, p. 3)

10. The most significant segment of DLB’s business is its two-way radio service, referred to as repeater access service. (Tr. 624-25; 1151-52) The repeater access business and related work is approximately 60 percent of DLB’s business. (Tr. 624-25; 909-910) According to Ronald, DLB will probably go out of business if it loses its licenses and is unable to offer repeater service. (Tr. 626)

11. DLB operates several stations, each of which is comprised of a repeater and related equipment. (Tr. 127-130) Repeaters are used to enhance the range of mobile radios. (Tr. 766) The range of DLB’s repeaters is approximately a forty-mile radius. (Tr. 766) Mobiles within this range are able to talk with each other by sending a radio signal through the repeater. (Tr. 767) DLB’s customers are primarily business and industrial customers who pay monthly fees to use this service. (Tr. 153; 886-87; 1272) Repeater customers also purchase radios and require service for their radios. (Tr. 1152)

(Tr. 770; 973)

12. DLB personnel refer to 480-512 MHz stations as “T-band.” (Tr. 647-48; 1155-56) DLB operates 15 to 18 “T-band” stations serving 1000-1200 mobiles. (Tr. 616) DLB offers T-band repeater service from three sites in Texas: Dallas, Fort Worth and Allen. (Tr. 584, 887) Customers pay a monthly fee per mobile. (Tr. 151; 886-87) T-band customers pay a fee (approximately \$15 per mobile) for their primary site (usually Dallas) and a small additional fee (approximately \$3) to use either or both of the other sites. (Tr. 67, 68-69, 151, 2423; 886-87; RP/PB Ex. 7) In addition, DLB serves approximately 1300 mobiles on its 900 MHz system and approximately 70-80 mobiles on its 800 MHz system. (Tr. 617)

B. Overview

13. The proposed findings of fact and companion conclusions of law are each divided into two sections. The first section discusses the abuse of process, real party-in-interest and unauthorized transfer of control issues. The second discusses the misrepresentation/lack of candor issue.

14. As discussed in detail below, in 1996, DLB personnel obtained 470-512 MHz licenses in the names of Brasher relatives in order to meet the needs of a large customer. Two of the names used by DLB belonged to deceased relatives, while four others belonged to relatives who did not know their names were being used. Another relative acquiesced in the use of her name but had no intention of assuming, and did not in fact assume, the duties of a licensee.

Finally, one of DLB's officers, David, used two variants of his name to acquire licenses to be used by DLB. DLB proceeded in this manner because at least three of its officers understood that there was a limit on the number of channels that DLB could obtain in its name at any one time. DLB also used two variations of the name of David, apparently in order to avoid the same limitation. Once DLB obtained the licenses, with one exception, it constructed the facilities and operated them as their own.

15. The misrepresentation section focuses primarily on statements made by DLB following a competitor's complaint that DLB was the real party-in-interest of various licenses, including those issued to the seven noted above. To stave off adverse Commission action, DLB falsely indicated that the named licensees actively supervised the operation of their stations. Moreover, at the hearing, DLB, through its officers, continued the charade by testifying falsely about various matters relating to the preparation of the applications and the operation of the stations.

C. Issues (b) and (c): Real Party-in-Interest/Unauthorized Transfer of Control/Abuse of Process³

16. In 1995, two cement-hauling (or concrete) companies approached Ronald about using DLB's services. (Tr. 97-104, 576; 1017) To serve such potential customers, Ronald knew that

³ The Bureau is addressing the real party-in-interest/unauthorized transfer of control/abuse of process issues first because, for the most part, the relevant events occurred prior to those related to the misrepresentation issue.

DLB needed spectrum to allow for private conversations and that nothing in the 450, 800 or 900 MHz bands would work or was available. (Tr. 104) Patricia and David also agreed that DLB needed more spectrum. (Tr. 778-79; 1016) Consequently, Ronald sought additional T-band channels to enable DLB to provide the service.⁴ (Tr. 97-104, 576)

17. Ronald was told by Scott Fennell of Personal Communications Industry Association, Ltd. ("PCIA"), the frequency coordinator, that there was a limit on the number of channels DLB could immediately obtain in its own name, his name or Patricia's name. (EB Ex. 17, pp. 2-3; Tr. 290-91, 585) Similarly, Ronald was advised by John Black of Spectrum License Consultants, Inc. ("Spectrum") that there was a PCIA/Commission limit of one new T-band station per entity or individual until the channel was constructed and loaded. (Tr. 285-86, 290-91, 586; 1635-36) John Black understood PCIA policy to be parallel to the Commission limit found in 47 C.F.R. § 90.313. (Tr. 1640-44) Patricia and David also understood that a limit existed with respect to the number of licenses that any one entity could obtain at the same time. (Tr. 779; 1012-13, 1036-37)

18. John Black helped Ronald research available frequencies in the 470-512 MHz range. (Tr. 104, 107-11) When they found several channels available for exclusive assignment in the

⁴ Those companies are now DLB's largest customers, leasing air-time for as many as 700 mobiles. (Tr. 100, 577-79)

Allen, Texas /northern Dallas metropolitan area, Ronald sent a list of names and addresses to John Black and asked him to prepare applications in those names for T-band licenses. (EB Ex. 19, p. 229; EB Ex. 66; Tr. 108-09, 126, 432-33, 573; 1218-29; 1632-33) Ronald chose the site for the potential licenses because DLB needed the coverage that the site selected would provide. (Tr. 111-13, 117, 498-99; 1626-27)

19. John Black prepared the applications and returned them to Ronald. (Tr. 413) After the applications were signed, Ronald submitted the applications to PCIA, the frequency coordinator, to be coordinated and sent to the Commission.⁵ (Tr. 184, 421-22; 1661-62) John Black listed the PCIA control (tracking) numbers assigned to each application. (EB Ex. 66; Tr. 1625-26) The frequency control numbers reflect that all of these applications were filed with the frequency coordinator on the same day, i.e., the 176th day of 1996. (Tr. 2262-63; EB Ex. 66, p. 4) The list of applicants that Ronald sent to John Black included the following names: O.C. Brasher, Ruth Bearden, Jim Sumpter, Norma Sumpter, Jennifer Hill, Melissa Sumpter, Carolyn Lutz, David Brasher and D.L. Brasher. (EB Ex. 66; Tr. 115-117, 432-33)

20. O.C. Brasher (or "O.C.") was the name of Ronald's deceased father. (EB Ex. 19, pp. 1-2; EB Ex. 21, pp. 1-2; EB Ex. 37, p. 6) Ruth Bearden (or "Ruth") was the maiden name of Ronald's deceased mother. (Tr. 172; EB Ex. 21, pp. 1, 3; EB Ex. 37, p. 6) Norma Sumpter

⁵ The frequency coordinator certifies, *inter alia*, that the application requests an available frequency. (Tr. 2256-59)

("Norma") is Patricia's sister. (Tr. 51; EB Ex. 19, p. 2) Jim Sumpter ("Jim") is Norma Brasher's husband and DLB's former accountant. (Tr. 51; 1738-39; EB Ex. 19, p. 2; EB Ex. 37, p. 5) Jennifer Sumpter Hill ("Jennifer") and Melissa Sumpter Ellington ("Melissa") are Norma and Jim Sumpter's daughters, Patricia and Ronald's nieces. (Tr. 94-96; 1986; EB Ex. 19, p. 2; EB Ex. 37, p. 1; EB Ex. 52, pp. 1, 4; EB Ex. 55, pp. 1, 5) Carolyn Susan Lutz (or "Carolyn") is another sister of Patricia and Norma, and she was the office manager at DLB. (Tr. 1132-33, 1137; EB Ex. 19, p. 2) David Brasher and D.L. Brasher both refer to Patricia and Ronald's son, David. (Tr. 94; 1034-35; EB Ex. 19, p. 2)

O.C. Brasher

21. O.C. Brasher died on August 17, 1995. (EB Ex. 6) Nevertheless, on June 17, 1996, Ronald signed the name O.C. Brasher to an application for a license for a new private land mobile station. (Tr. 281; EB Ex. 3, p. 4) Patricia wrote the check that accompanied the application. (EB Ex. 3, p. 2; Tr. 784-86) Ronald and Patricia took these actions even though they (and David) knew that O.C. was dead. (Tr. 345; 804; 951) Ronald justified the filing by asserting that O.C. had intended to have a station. (Tr. 604) In this regard, Ronald noted that O.C. had signed a different application dated June 29, 1995, which was never filed with the Commission because, supposedly, it had been mishandled by the frequency coordinator. (EB Ex. 68; Tr. 341-42) Patricia claimed that she was unconcerned about the 1996 filing because she considered that application to be a part of O.C.'s estate. (Tr. 874) The Commission granted O.C.'s application

on September 25, 1996, resulting in the license for Station WPJR761. (Tr. 281, 345-46; RB/PB Ex. 3)

22. On December 9, 1997, Ronald submitted FCC Form 800A in response to a Commission inquiry as to whether Station WPJR761, licensed to O.C. Brasher, had been constructed. Ronald reported that as of April 26, 1997, 90 mobiles were in operation on 484.0125 MHz. Ronald signed the document as "O.C. Brasher EST. R.D. Brasher." (RB/PB Ex. 3; Tr. 220) Ronald testified that he intended "EST." to mean "Estate." (Tr. 655) However, Ronald did not intend this to be official notice to the FCC that O.C. was deceased. (Tr. 654-55)

23. On September 1, 1998, Ronald filed an application requesting, *inter alia*, the assignment of Station WJPR761 from O.C. Brasher to DLB. (EB Ex. 20, *in particular, see* pp. 3, 10; EB Ex. 21, p. 24) Ronald signed O.C.'s name and dated the application "1/26/98." (EB Ex. 20, p. 10; EB Ex. 21, p. 24)

24. As of March 9, 1999, DLB has operated Station WPJR761 purportedly pursuant to a management agreement. (EB Ex. 5) Ronald signed O.C.'s name to the agreement. (Tr. 354; EB Ex. 5, p. 11) Patricia signed the agreement on behalf of DLB. (EB Ex. 5, p. 11. See also EB Ex. 19, pp. 500-10)

25. In response to Commission letters of inquiry dated March 4, 1999, Jim Sumpter (not

DLB) informed the Commission in April 1999 that O.C. was deceased. (EB Ex. 18; EB Ex. 19, p. 2; EB Ex. 36; EB Ex. 37, p. 6) Ultimately, only after being asked directly by the Commission, did DLB confirm in October 1999 that O.C. had died in August 1995. (EB Ex. 21, pp. 1, 2, 5, 10, 15, 19, 24, 47; EB Ex. 23)

Ruth Bearden

26. Ruth Bearden was Ronald's late mother's maiden name. (Tr. 172) Her married name was Ruth Brasher, the name by which most people knew her. (Tr. 977; 1224-25; 1580) She died April 22, 1991. (EB Ex. 12) Nevertheless, in 1996, Ronald asked John Black to prepare an application in Ruth Bearden's name. (EB Ex. 66 at 1; Tr. 171-72, 432-33; 874-75; 1580-82) On June 18, 1996, Ronald signed Ruth Bearden's name to that application. (Tr. 171; EB Ex. 9, p. 4) Patricia knew that the check she wrote for the application was for the purpose of obtaining a license for Ruth Bearden, which she claimed to be acceptable even though Ruth was dead. (Tr. 785-86, 875; EB Ex. 9, p. 2) PCIA forwarded the application to the Commission where it was received on July 16, 1996. (EB Ex. 9, p. 3; Tr. 2271) Grant of that application resulted in the license for Station WPJR762 for 90 mobiles. (Tr. 171, 201; EB Ex. 9, p. 8; EB Ex. 10, p. 1; EB Ex. 11, p. 5)

27. By letter dated March 31, 1998, the Commission canceled the license issued to Ruth Bearden for Station WPJR762 for failing to construct within the time specified in the

Commission's rules. (EB Ex. 10, p. 2) The Commission sent the letter canceling Ruth's license to 224 Molina Drive, Sunnyvale, Texas 75182, which was Ronald's home address as well as the address of record for Ruth Bearden. (EB Ex. 10, pp. 1-2; Tr. 46, 181)

28. In April 1998, John Black received a fax from Ronald that included: a copy of Ruth's license for Station WPJR762 with a handwritten request from Ronald for preparation of an application for DLB using that station's license frequency and location and a copy of the license cancellation letter. (EB Ex. 10, pp. 1-2; Tr. 1666, 1668-69) John Black complied with Ronald's request, resulting in DLB's application for the same frequency, location and number of mobiles formerly assigned to Ruth Bearden. (EB Ex. 10, p. 10; Tr. 1668-69)

29. Ronald also now holds the license for Station KCG967 as a result of an assignment of that license from Ruth Bearden. (Tr. 1715-18; EB Ex. 13) Ruth "signed" her part of the application on October 18, 1994, more than three years after her death. (EB Ex. 13, p. 5) Although Ronald does not remember his role in the application, he acknowledged that the signature on the assignment application looks like his handwriting and appears similar to the signature he admits signing on EB Ex. 9 at 4. (Tr. 171, 222)

30. In response to Commission letters of inquiry dated March 4, 1999, Jim Sumpter (not DLB) informed the Commission in April 1999 that Ruth was deceased. (EB Ex. 18; EB Ex. 19, p. 2; EB Ex. 36; EB Ex. 37, p. 6) Ultimately, only after being directly asked by the Commission,

did DLB confirm in October 1999 that Ruth had died in April 1991. (EB Ex. 21, pp. 1, 3, 5, 10, 15, 19, 25, 59; EB Ex. 23)

The Sumpters

31. Jim Sumpter operates a CPA accounting office. (Tr. 1738) DLB was one of his clients from 1982 through 1997. (Tr. 1738-39) Jim provided bookkeeping and accounting services and gave tax advice. (Tr. 1739) Norma worked in Jim's office most, if not all, of that time. (Tr. 1879, 1987) From 1995 through 1997 she was a secretary/bookkeeper who reconciled DLB accounts. (Tr. 2106) Jennifer worked part time in Jim's office from 1987 until August 1994, while she was a student. (Tr. 1045-46; 2112-13) Melissa worked in Jim's office only occasionally, during Christmas-time school breaks. (Tr. 1312-14; 2112-13)

32. In 1996, Ronald requested that John Black at Spectrum prepare applications in the names of the Sumpters for new stations to be located in Allen, Texas. (Tr. 117-118; 1647, 1652, 1657, 1659, 1686; EB Ex. 37, p. 33; EB Ex. 45, p. 14; EB Ex. 52, p. 14; EB Ex. 55, p. 18) John Black never spoke to the Sumpters during the preparation of the applications. (Tr. 1649) According to the Sumpters, they did not participate in the preparation of the 1996 applications, nor did they authorize, review or sign those applications before they were submitted to the Commission.⁶ (Tr. 1049-51, 1076-78, 1120-22; 1318-21; 1942-43; 2011-12, 2029, 2102; EB Ex.

⁶ As will be discussed more fully *infra*, the Bureau believes that DLB made misrepresentations with respect to filings and testimony that the Sumpters, either individually or collectively,

34; EB Ex. 35; EB Ex. 37; Ex. 41; EB Ex. 45; EB Ex. 49; EB Ex. 52; EB Ex. 54; EB Ex. 55) Gale Bolsover, a certified and experienced forensic document analyst employed by the U.S. Postal Service, also testified that the Sumpters did not sign their 1996 applications. (Tr. 2295-99, 2301-03, 2308, 2312-16, 2344-46, 2363-64; EB Ex. 35, p. 4; EB Ex. 41, p. 4; EB Ex. 49, p. 3; EB Ex. 54, p. 3)

33. The Commission granted the applications and issued licenses on September 25, 1996 to Jim (WPJR725), Norma (WPJR739) and Jennifer (WPJR740) and on October 2, 1996 to Melissa (WPJS437). (EB Ex. 37, p. 33; EB Ex. 45, p. 14; EB Ex. 52, p. 14; EB Ex. 55, p. 18) The Sumpters did not recall receiving the 1996 licenses in the mail.⁷ (Tr. 1115, 1321; 1760-61; 2026) The Sumpter household and office had been receiving Commission-related mail for several years because of applications previously signed by Norma Sumpter. (EB Ex. 42; EB Ex. 43; EB Ex. 44; EB Ex. 45, p. 1; Tr. 1988-89, 2003-20, 2077-78, 2124-25, 2127-28) Although both Melissa and Jennifer had signed applications in the early 1990s, it appears that the licenses ultimately issued were only to Norma. (Tr. 1058-59; 1071, 1073; 1315; 2092; EB Ex. 42; EB Ex. 43; EB Ex. 44; EB Ex. 45, p. 1; EB Ex. 52, p. 1; EB Ex. 55, p. 1) Consequently, the Sumpters paid little attention to Commission-related mail received as a result of the 1996 applications, and they continued to forward all Commission-related mail they received to DLB, in accordance with Ronald's and Patricia's previous instructions. (Tr. 1053-54, 1056, 1085-86; 1374-75; 1844-45,

knowingly signed certain applications or otherwise knowingly participated in the process of obtaining the licenses or operating the licensed stations.

⁷ Although Patricia testified that Jennifer called to inform her that she, Jennifer, had received her

1953-56; 2078-79, 2125, 2131) Norma does not recall when she stopped opening mail from the Commission, but in 1996 she was forwarding it unopened to Ronald. (Tr. 2079, 2125) The Sumpters did not learn about the 1996 licenses until late 1997 and had no involvement with “their” 1996 licenses until they executed documents to transfer the licenses out of their names.⁸ (Tr. 1065-68, 1117; 1320, 1322, 1344-45, 1348-50, 1378-79, 1436; 1762-65, 1783-89, 1791, 1819, 1845, 1964-65; 2029, 2053, 2059-65, 2072-74, 2099-2103; EB Ex 35, p. 30; EB Ex. 37, pp. 1-3; EB Ex. 45, p. 1-2; EB Ex. 46; EB Ex. 52, pp. 1, 10; EB Ex. 55, p. 2-3, 14).

34. After grant of the applications, Ronald undertook the responsibility of constructing all of the stations.⁹ (EB Ex. 17, pp. 2-3) Ronald and Patricia purchased the repeaters and then leased them to DLB. (Tr. 136) Other DLB personnel helped with construction as part of their duties for DLB. (Tr. 128-131, 136-38; 871) The stations were constructed in a concrete block building adjacent to a tower, which is surrounded by a chain link fence. (Tr. 643) Anyone wishing to enter the building needs the combination to the lock. (Tr. 643) The Sumpters were not consulted regarding the location of “their” stations and did not know when, where, how or if

license, Jennifer did not recall receiving the license. (Tr. 818; 1114-15)

⁸ The Sumpters also did not authorize or participate in the preparation of the “Opposition” filed with the Commission on November 25, 1997 by counsel purporting to represent them. (Tr. 1935, 1937; 2056-57; 1323; EB Ex. 34, p. 6; EB Ex. 37, pp.2, 14-19; EB Ex. 55, p. 3) Although Jim Sumpter received a faxed copy of the draft pleading on November 23, 1997, he was not asked for, and did not give, his approval of the document. (Tr. 2054-58) Jennifer first learned about the November 25, 1997, pleading from Mr. John McVeigh, whom the Sumpters retained to represent them in this matter. (EB Ex. 55, p. 3) Melissa first saw that pleading during, or immediately prior to, the hearing. (Tr. 1323)

⁹ This includes not only the Sumpters’ stations but also the ones licensed to O.C. Brasher,

“their” stations were constructed. (Tr. 1065-68; 1344-45; 1784-89; 2099, 2101)

35. The Sumpters did not pay for any of the costs related to licensing, construction and operation of “their” stations, nor did they discuss such payments with anyone. (Tr. 170; 817; 1065-68; 1348-50; 1784-89; 2101-04) DLB paid the costs associated with the licensing and operation of the stations. (Tr. 292, 446-47; 817) According to Ronald and Patricia, it was assumed by everyone that DLB would bear all costs associated with the stations and, consequently, there were no discussions with the Sumpters regarding application, construction or operational costs. (Tr. 294, 446; 817)

36. Ronald and Patricia rent space for the repeaters using their personal funds, and DLB pays rent to the Brashers for use of the repeaters. (Tr. 510; 1574) DLB personnel load customers on the stations and bill the customers. (Tr. 162-68; 871-72; EB Ex. 17, p. 6) The revenues received from operation of the stations are deposited into the DLB account. (Tr. 155) DLB did not compensate the Sumpters in any way for the use of “their” licenses. (Tr. 170; 1065-68, 1097; 1345; 1791-94; 2102) In this regard, Ronald acknowledged that he did not consider Jennifer’s use of a car radio-phone supplied by DLB as payment for DLB’s use of the Sumpter licenses. (Tr. 456; *see also* 1794)

37. DLB does not break down its revenues and expenses by station, and none of the Sumpters has ever been given a breakdown of the revenue and expenses of his or her particular

station. (Tr. 155-56; 987-88, 991-992; 1577-79) Although DLB contends that the Sumpters had access to all of the financial information pertaining to each of their stations because that information could be found in the documents delivered each month to Jim while he was DLB's accountant, Jim testified that the profits and losses at the Allen site could not be determined from the records provided to him by DLB. (Tr. 161, 451; 1910; EB Ex. 17, p. 4) According to Jim, while he was DLB's accountant, he only knew about the aggregate revenue from DLB's repeater business and had no knowledge regarding the specific fees, costs and profits assigned to that repeater business. (Tr. 1984-90) Moreover, Jim declared that he has not received any financial information from DLB since resigning as DLB's accountant. (Tr. 1791) He testified that he would not know whether the station licensed in his name was profitable because DLB's accounting system did not provide sufficient information. (Tr. 1788) Similarly, Norma testified that she did not know how to determine the revenue or expenses of a particular station and did not receive sufficient information from DLB to separate the finances by station. (Tr. 2111-12) Diane Brasher, currently the primary financial officer of DLB, and Steven Hill, DLB's current accountant, both testified that they do not know how to determine the monthly revenues and total expenditures of a specific station. (Tr.1514; 1577) Additionally David admitted that none of the Sumpters have received any financial information from DLB since Jim withdrew as DLB's accountant. (Tr. 987-88)

38. DLB personnel operated and maintained the repeaters. (Tr. 871) The Sumpters had no authority to hire or fire DLB staff, notwithstanding "advice" that may have been provided by

Jim, and did not participate in any way in the operation of “their” stations. (Tr. 454-55; 814; 986-87; 1065-68; 1348-50; 1740-41, 1784-89, 1896-97; 2099-2101)

39. After learning about “their” licenses in November 1997, Jim contacted Ronald and Patricia and, on behalf of the Sumpters, requested that the Brashers immediately transfer all licenses out of the Sumpter names. (Tr. 1763-64, 1774-75; 2171; EB Ex. 37, p. 2; EB Ex. 39) On November 29, 1997, the Sumpters each wrote Ronald and Patricia a letter, indicating that they knew nothing about the licenses in their names and again requesting that those licenses be transferred out of their names. (Tr. 1098; 1327; 1772-73; 2051-52; EB Ex. 40; EB Ex. 47; EB Ex. 53; EB Ex. 56) In response to their requests, Ronald brought four 800A form letters, dated November 17, 1997, to Jim’s office for each of the Sumpters to sign. (Tr. 1771-72; 2058-64; EB Ex. 34, p. 9; EB Ex. 37, pp. 2-3; EB Ex. 38; EB Ex. 46) Both Melissa and Jennifer had also received such forms directly from the Commission. (EB Ex. 52, p. 1; EB Ex. 55, p. 2)

40. At that time, Ronald did not explain to Jim and Norma that they had to sign both an 800A and an Assignment of Authorization (a/k/a 1046) Form prior to the transfer of a station. (Tr. 1979; 2234) After signing their 800A forms Jim and Norma realized that they were not “transfer” forms. (Tr. 1964-66; 2191-92) Consequently, on December 20, 1997, Jim and Norma sent letters to Ronald and Patricia in which they again asked that their names be removed from the licenses. (EB Ex. 40; EB Ex. 48) In their letters, they acknowledged signing the 800A form letters but affirmed that the applications and licenses themselves, as well as any information

about the licenses, derived from Ronald and Patricia, and that any benefit from the licenses inured only to Ronald and Patricia. (Tr. 1771-72; 2067-68, EB Ex. 40; EB Ex. 48)

41. In January 1998, Ronald provided completed Assignment of Authorization forms (FCC Form 1046) to the Sumpters for their signatures. These forms provided for the transfer of the Sumpter licenses to DLB. (Tr. 1783, 1964; 2071-73; 1063; 1401-02; EB Ex. 37, p. 30; EB Ex. 45, p.10; EB Ex. 55, p.14; EB Ex. 52, p.10) Each of the Sumpters signed his or her Assignment of Authorization form and returned it to Ronald. (Tr. 1063; 1327-28; 1964; 2073) Shortly thereafter, Ronald called Jim, demanding that Jennifer and Melissa return executed 800A forms to him, and told Jim that Jennifer and Melissa were in “big trouble.”¹⁰ (Tr. 1964) As a result of that call, Jim assumed that Ronald had not filed the Assignment of Authorization forms executed by the Sumpters with the Commission. (Tr. 1964-65, 1974) Consequently, he advised Melissa and Jennifer not to sign the 800A forms, and he sought legal counsel regarding this matter. (Tr. 1964-65; EB Ex. 38; EB Ex. 46)

42. Ultimately, the Sumpters retained John McVeigh. (Tr. 1126; 1620; 1981; EB Ex. 37, p. 3; EB Ex. 45, p. 2; EB Ex. 52, p. 3; EB Ex. 55, p. 3) As reflected in their October 6, 2000 “Joint Statement Pursuant to § 1.92 of the Rules,” the Sumpters continued to affirm that they did not have any role whatsoever in the operation of “their” stations. (EB Ex. 34)

¹⁰ Jennifer and Melissa had previously discarded the 800A forms that they had received from the Commission. (Tr. 1081-83; 1325-26; EB Ex. 52, pp. 1, 8; EB Ex. 55, pp. 2, 9) In early April 1998, Jennifer received a letter from the Commission that notified her that her license had been cancelled. (EB Ex. 55, p. 16.) She and Jim kept that letter but did not discuss it with anyone

Carolyn Sue Lutz

43. Another of Patricia Brasher's sisters, Carolyn Sue Lutz, worked for DLB when DLB was expanding in 1996. (EB Ex. 63, EB Ex. 64 Tr. 1137, 1163) Ronald approached Carolyn and asked her to apply for a license, and she agreed to do it as a favor to Ronald. (Tr. 1162, 1167) Carolyn gave Ronald and Patricia permission to "use" her name, but Carolyn did not have any involvement with the station licensed to her.¹¹ (Tr. 1191-93)

44. Carolyn did not participate in the operation of her station beyond performing her duties at DLB. (EB Ex. 63; EB Ex. 64; Tr. 1215-18) Even though she handled the receivables for DLB as a part of her job, she was unaware of the revenue and expenses associated with the operation of the station and did not know how to compute such figures. (Tr. 1139-40, 1269, 1275-79) Carolyn was never asked to pay expenses related to the station, nor did she assume any financial risk in connection with her 1996 license. (Tr. 817; 1191-93, 1201-02)

45. In 1999, Ronald asked Carolyn to sign a management agreement with DLB, authorizing DLB to manage the station held in Carolyn's name. (EB Ex. 62; Tr. 1188-89) Carolyn refused to sign the management agreement that Ronald proposed. (Tr. 1188-89) She did

from DLB. (Tr. 1060-63)

¹¹ Likewise, in the early 1990s, Carolyn had signed an application for a 900 MHz license when asked to do so by Ronald. (Tr. 1158)

not think a management agreement was necessary because, as far as she was concerned, the station was Ronald's, not hers; her name was just used for the license. (Tr. 1190-93) She also worried that the proposed management agreement made her responsible for "things that [she] had no business being responsible for." (Tr. 1190) Carolyn, at Ronald's request, drafted a management agreement that gave her, *inter alia*, a greater share of the profits and less responsibility. (Tr. 1196-97) Ronald did not accept her counter offer. (Tr. 1197-98)

46. Carolyn signed an application consenting to the assignment of her station to DLB. (EB Ex. 20, p. 15; EB Ex. 61; Tr. 1172-73) Carolyn did not receive any compensation for signing the assignment application. (Tr. 1176-78) In this regard, Carolyn had a single radio-phone in her car while she worked for DLB, which was installed, at Patricia's suggestion, so that Patricia could reach Carolyn when Carolyn was running errands, and which DLB removed after Carolyn ceased working for DLB in September 2000. (Tr. 514; 1159-60)

David Brasher

47. The list of names for 1996 applications that Ronald sent to John Black included David Brasher with an address of 2910 West Bend Dr., Irving, Texas 75063-3113, and D.L. Brasher with an address of 222 Molina Dr., Sunnyvale, Texas 75182. (EB Ex. 19, p. 229; EB Ex. 66) The latter was and is David's and Diane's home address. (Tr. 905-06; 1535) To accommodate his father (Ronald), David applied for two licenses to operate two Allen site

repeaters under the names David L. Brasher and D.L. Brasher, using the two different addresses noted above. (Tr. 933-34) David testified that the reason he filed applications in two different names with two different addresses was to try to hide assets from his wife and from the divorce court in the event of a divorce. (Tr. 1034-35) At the time his applications were filed, David worked full-time for IBM as a manager at a data center. (Tr. 906, 996) After the applications were granted and a license was issued in each of the applicant's names, DLB built and managed the stations. (EB Ex. 17, pp. 2-3; Tr. 932-33)

48. On September 1, 1998, Ronald filed an application requesting, *inter alia*, the assignment of Station WPJR757 from David L. Brasher to DLB. (EB Ex. 20, *in particular, see* pp. 3, 11, 22) On that same day, Ronald sought the assignment of Station WPJR750 from D.L. Brasher to DLB. (EB Ex. 20, *in particular, see* pp. 3, 12, 22) Notwithstanding that David L. Brasher and D.L. Brasher are the same person, the signatures differ and the applications were signed on different dates. (Compare EB Ex. 20, p. 11, with EB Ex. 20, p. 12)

Thomas Lewis

49. In addition to the licenses already discussed, Ronald used his brother-in-law, Thomas Lewis ("Thomas"), to obtain the license for Station WPIR456. (Tr. 683-86, 690, 699; EB Ex. 65) Although Thomas' license is not a T-band license, the facts and circumstances surrounding this license further evidence DLB's pattern of abusive and deceptive conduct in using surrogates to

obtain licenses for its use. In this regard, Thomas noted that he never used more than two mobiles, even though the station is for 30 mobiles. (Tr. 686-88) Moreover, while Thomas paid the renewal fee, Ronald reimbursed him. (EB Ex. 65, p. 4; Tr. 688-89, 730, 741-42, 747-48) Further, although Thomas did not want to renew his license, Thomas signed the renewal application because David assured him that he could get the license out of Thomas' name. (Tr. 701-03, 731-33, 981) Finally, prior to Thomas' deposition, Ronald told him not to tell that Ronald had asked him to sign for the license. (Tr. 714)

D. Issue (a): Misrepresentation/Lack of Candor

50. Some of the facts that relate to the misrepresentation/lack of candor issue have been discussed above. We will repeat such facts only to the extent necessary.

O.C. Brasher and Ruth Bearden

51. In 1994, 1996, 1997 and 1998, Ronald and Patricia knew, with respect to applications which concerned or resulted in Stations KCG967, WPJR761 and WPJR762, but did not make known to the Commission, that O.C. Brasher and Ruth Bearden (Brasher) were dead. (EB Ex. 3, p. 4; EB Ex. 6; EB Ex. 9, p. 4; EB Ex. 12; EB Ex. 13, p. 5; EB Ex. 20, p. 10; EB Ex. 21, p. 24; RB/PB Ex. 3; Tr. 171-72, 220, 222; 784-86)