52. The "Opposition" filed with the Commission on November 25, 1997, which responded to a "Petition for Order to Show Cause" filed November 17, 1997, by Net Wave Communications, Inc., states on page 3: "There are family relationships among the Brashers and the Sumpters, but *nothing prevents each of them from holding one or more licenses* for private carrier or commercial mobile radio service stations." (Emphasis added) (EB Ex. 2, p. 3) Likewise, later on the same page, the "Opposition" asserts: "Each of the operators retains control of its own station(s)." (*Id.*) Under penalty of perjury, Ronald swore to the truth of the "Opposition." (EB Ex. 2, p. 7)

53. By letter dated November 9, 1998, the Commission propounded a series of questions to counsel for DLB *et al.*, which sought to determine whether a violation of 47 C.F.R. § 90.187 or 47 U.S.C. § 310(d) had occurred. (EB Ex. 16) Among other things, the Commission asked DLB to explain the licensees' roles in supervising DLB's management of their respective stations. In addition, the Commission asked DLB to identify the person responsible for performing various actions in connection with the stations managed by DLB. (*Id.*, p. 2)

54. By letter dated December 7, 1998, counsel submitted a response on behalf of DLB and Ronald, which Ronald verified. Among other things, Ronald stated at pages 2 and 3: "Each licensee was to be, and was, informed of the date of construction and placing in operation so that the licensee could file a timely report with the Commission.... Each licensee retained its right to sell, transfer, remove from management, or cancel its license at any time." (EB Ex. 17, pp. 2-3)

Likewise, on page 5, Ronald stated that "[e]ach applicant and licensee was responsible for reviewing and signing its own application in connection with the Managed Stations." (*Id.*, p. 5, answer 2(d))

55. By letter dated March 4, 1999, the Commission asked DLB to describe the criteria used to select licensees and to identify each licensee that did not review station operation reports and/or give directions to Ronald for improvement or correction of problems. (EB Ex. 18, pp. 2-3) DLB's response, filed April 6, 1999, which Ronald verified, suggested that he had contacted prospective licensees that met various criteria, including: an ability and willingness to perform the duties of a licensee; a willingness to participate in funding construction and operations; and a willingness to actively participate in sales of service and equipment. (EB Ex. 19, pp. 3-4) The response also stated: "All other licensees participating in management agreements with DLB have provided substantial direction and supervision regarding the operation of the subject facilities." (EB Ex. 19, p. 5) DLB's response, as later clarified by Ronald's testimony, also suggested that O.C. had signed a management agreement with DLB. In fact, Ronald had signed O.C.'s name to the agreement. (EB Ex. 5; EB Ex. 19, pp. 500-11; Tr. 348-56)

56. At the hearing, Ronald admitted that his April 1999 response included O.C. Brasher with those who gave direction and supervision regarding their stations. Ronald sought to justify his inclusion of O.C. by noting that in January 1992, O.C. had executed, *inter alia*, a Power of Attorney. (Tr. 330-32, 605-08; RB/PB Ex. 2) However, apparently on the same day, O.C. also

executed the cancellation clause contained in the Power of Attorney, something Ronald claimed not to have noticed. (Tr. 606-07) In addition, Ronald asserted that he did not know what happens with respect to a power of attorney upon the death of the grantor.[12] (Tr. 332) In this regard, by comparison, Ronald had claimed at his deposition that he had authority to act on behalf of O.C. because he supposedly had a court order appointing him executor of O.C.'s estate. (EB Ex. 78, pp. 186-88) However, in response to the Bureau's request for a copy of the court order, Ronald produced a 1989 application to be appointed guardian of O.C. Brasher and then testified that he did not know whether there had been an order appointing him executor of O.C.'s estate. (EB Ex. 69, pp. 231-240) By the time of the hearing, Ronald admitted that there was no court order appointing him executor of O.C.'s estate. (Tr. 333) Moreover, Ronald admitted that O.C.'s Will was never probated and that O.C.'s property has not been distributed among his heirs. (Tr. 333-34)

57. After receiving information that both O.C. and Ruth Bearden were dead, the Commission, by letter dated September 9, 1999, inquired, *inter alia*, about the supervision and/or assistance provided relative to the preparation and/or filing of applications in the names of O.C. and Ruth Bearden. The referenced applications included those seeking licenses for O.C. and Ruth, which were filed on July 16, 1996, as well as an application to assign the license for Station WPJR761 from O.C. Brasher to DLB Enterprises, Inc., which was filed on September 1, 1998. (EB Ex. 8; EB Ex. 20; EB Ex. 23)

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[12] David's supposed understanding is that DLB can legally operate a station licensed to O.C. even though O.C. is deceased. (Tr. 952)

58. On October 14, 1999, responses were submitted on behalf of Patricia, Ronald, David, Diane Brasher (David's wife) and Carolyn Lutz. Although she acknowledged that both O.C. and Ruth were dead, Patricia claimed that she had not provided any assistance or supervision of any sort with respect to the preparation or filing of the license applications for both O.C. and Ruth Bearden. (EB Ex. 21, pp. 4-8) However, Patricia had written checks knowing that they would accompany the applications. (Tr. 784-86; EB Ex. 3, p. 2; EB Ex. 9, p. 2)

59. Ronald acknowledged having a role in both applications. However, with respect to O.C.'s license (WPJR761), Ronald referred to an application purportedly signed by O.C. on June 29, 1995, and made no reference to the application on which he signed O.C.'s name in 1996. (EB Ex. 21, pp. 24, 28-36) As for the assignment application, Ronald claimed that: "In his capacity as Executor of the Estate, Ronald Brasher attempted to preserve the license as an asset of the estate. Therefore, Ronald Brasher prepared and submitted an application to assign the license out of the name of the deceased and into the name of one of the heirs to the O.C. Brasher estate." (*Id.*, p. 24) With respect to Ruth Bearden's license, Ronald claimed that: "The intent of this application was to create a license in the name of a corporation for which Ruth I. Bearden was formally the principal. Due to an error in the preparation of the application at issue and the similarities that exist between the names of Ronald Brasher's late mother and this entity, the license was applied for in the name of the individual instead of the corporate entity that was the intended recipient of the license." (*Id.*, p. 25) Ronald further claimed that, upon learning of his

error, he faxed a request to cancel the application. (*Id.*, pp. 25, 49-57) Finally, Ronald declared that immediately after the Commission issued the Ruth Bearden license, he called the Commission to try to cancel the license. (*Id.*, p. 25)

60. As noted above, contrary to both the October 1999 response and his deposition testimony, Ronald ultimately acknowledged at the hearing that he never had been appointed an executor of O.C.'s estate. (Tr. 333-34) Likewise, with respect to the application for Ruth Bearden, Ronald changed his story at the hearing. There, he claimed that the 1996 application in the name of Ruth Bearden was submitted on behalf of Ronald's uncle, Ed Bearden, who needed a license for his sand and gravel hauling company. According to Ronald, he submitted the application at Ed Bearden's request because Ed was a convicted felon, who supposedly would not have been able to obtain a license in his own name. (Tr. 196-97) Moreover, according to Ronald, he never received the Ruth Bearden license for Station WPJR762 or the letter from the Commission, which canceled the license. (Tr. 177, 181, 209) The evidence, however, reveals that Ronald sent to John Black a facsimile copy of Ruth's license and a copy of the cancellation letter (*see* para. 28, *supra*).

The Sumpters

61. Ronald and Patricia claimed repeatedly that the Sumpters (Jim, Norma, Jennifer and Melissa) wanted to become licensees, and that they signed their respective applications, which

were filed at the Commission on July 18, 1996. (Tr. 400-03, 408-09, 414-26; 809-22; EB Ex. 17, p. 5; EB Ex. 19, pp. 4, 9; EB Ex. 22, p. 7; EB Ex. 35; EB Ex. 41; EB Ex. 49; EB Ex. 54) Further, Ronald denied that he ever signed an application in the names of any of the Sumpters. (EB Ex. 22, p. 9) The Sumpters, on the other hand, repeatedly denied that they participated in the preparation of the 1996 applications or that they reviewed, signed or in any way authorized those applications before they were submitted to the Commission. (Tr. 1049-51, 1076-78, 1120-22; 1318-21; 1942-43; 2011-12, 2029, 2088-89, 2095, 2102; EB Ex. 34; EB Ex. 37; EB Ex. 39; EB Ex. 45; EB Ex. 47; EB Ex. 48; EB Ex. 52; EB Ex. 53; EB Ex. 55; EB Ex. 56) In addition to the Sumpters' consistent denials, the evidence reflects Diane's belief that Jim is trustworthy and reliable, Ronald's inconsistent claims,[13] and testimony provided by the handwriting expert, Ms. Bolsover, that the Sumpters did not sign their 1996 applications and that Ronald dated Jim's application. (Tr. 2304, 2344-46, 2363-64; EB Ex. 35; EB Ex. 41; EB Ex. 49; EB Ex. 54; EB Ex. 75; EB Ex. 76)

62. Ronald and Patricia also testified at length (and submitted other sworn statements) that, in their presence, the Sumpter women signed (and Norma may have dated) "Client Copies" of their 1996 applications on June 22, 1996. (Tr. 415-17, 419-20, 426-32; 822-25; EB 19, pp. 198-204, 206-08, 214-16; EB Ex. 22, pp. 7-8) In direct conflict with those claims, the Sumpter

[13] Although the application purportedly signed by Jim is dated *6/18/96*, Jim received a letter from Ronald, dated January 6, 1998, claiming that Ronald had seen Jim sign "a request for license" in *July* 1996. (EB Ex. 35, p. 4; EB Ex. 37, p. 27) Similar conflicts as to the date and place of signing exist with respect to the applications or "request for license[s]" purportedly signed by Melissa and Jennifer. (*Compare* EB Ex. 26 and EB Ex. 55, p. 11, *with* EB Ex. 49, p. 3; EB Ex. 54, p. 3)

women denied signing the "Client Copies," either for themselves or for another. (Tr. 1068-71, 1073-74; 1333-38; 2029-31, 2089; EB Ex. 19, pp. 198-204, 206-08, 214-16) Moreover, Norma demonstrated that she could not have signed the "Client Copy" on June 22, 1996, as claimed by Ronald and Patricia, because on that date, Norma was hundreds of miles away from the place of the supposed signing with Jim visiting a sick aunt. (Tr. 1797-98, 1943-44; 2032-46; EB Ex. 70) Further, it appeared to Norma and Melissa that their signatures had been cut and pasted from other documents to their respective "Client Copies."[14] (Tr. 1331-33; 2091) Finally, although Ms. Bolsover believed the signatures on the "Client Copies" were authentic, she also testified that the copies were of such poor quality that she could not determine whether the signatures were original to the documents or whether they were copied onto the documents. Ms. Bolsover further observed that at least two of the dates were identical, indicating that one or more of them were copied onto the documents. (Tr. 2348-49, 2360-63; Judge's Ex. 3) In light of the foregoing, it is reasonable to infer that the Sumpter women's signatures and the dates on the "Client Copies" were lifted from other documents and that only Ronald and/or Patricia could have taken or authorized such actions.

63. Ronald suggested that the Sumpters knowingly participated in and subscribed to the November 25, 1997, "Opposition" to Net Wave's petition. (EB Ex. 2, pp. 1, 6) The "Opposition" further suggested that "three individuals named Sumpter ...submit[ted] applications for radio stations" and claimed that "[e]ach [operator retained] control of its own

[14] The Bureau notes that Norma's signature on her "Client Copy" appears identical to her signature on the assignment application she executed in 1998. (*Compare* EB Ex. 19, p. 200 *with*

station(s)." (EB Ex. 2, p. 3) However, none of the Sumpters authorized Ronald to submit the "Opposition." (EB Ex. 37, p. 2; EB Ex. 55, p. 3; Tr. 1323) Moreover, as noted above, the Sumpters did not file or authorize the filing of the 1996 applications. (Tr. 1049-51, 1076-78, 1120-22; 1318-21; 1942-43; 2011-12, 2029, 2102; EB Ex. 34; EB Ex. 35; Ex. 41; EB Ex. 49; EB Ex. 54) Finally, the Sumpters had no role, much less control, with regard to the licenses that the Commission had issued to them. (Tr. 1065-68; 1344-50; 1784-91; 2099-2105; EB Ex. 34; EB Ex. 37, pp. 1-4; EB Ex. 45, p. 3; EB Ex. 52, p. 3; EB Ex. 55, p. 4)

64. In his December 4, 1998, response to a November 9, 1998, Commission inquiry, Ronald, in responses 1(c) and 1(d), indicated that the Sumpters received and reviewed reports and/or otherwise supervised "their" respective stations. (EB Ex. 17, p. 4) As noted above, the Sumpters had no role whatsoever in the operation and management of "their" stations. (Tr. 1065-68; 1344-45, 1348-50, 1378-79; 1783-89, 1791, 1819, 1964-65; 2059-64, 2065, 2072-74, 2099-2103; EB Ex: 35, p. 30; EB Ex. 46; EB Ex. 55, p. 3)

65. DLB, in its April 5, 1999, response (which was verified by Ronald) to the Commission's March 4, 1999, inquiry, described Ronald's and Patricia's dealings with the Sumpters. (EB Ex. 19, p. 630) Specifically, the response suggested that the Sumpters were recruited because they committed to provide funds and/or reimburse DLB in the event the stations were unprofitable. (*Id.*, pp. 3-4) Likewise, the response claimed that: the Sumpters were informed of their duties; the Sumpters accepted DLB's offer; and the Sumpters could be viewed

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EB Ex. 20, p. 19)

as sophisticated investors. (*Id.*, p. 4) Additionally, in sections 7(a) and 11, DLB claimed that the Sumpters (and the other licensees) received use of three control stations and five mobile units worth approximately $7,600 and air-time worth approximately $200 per month on a cost-free basis in lieu of receiving cash. (*Id.*, pp. 6, 10) Finally, DLB claimed that the Sumpters "approved" major purchases. (*Id.*, p. 7)

66. As noted above, the Sumpters did not make any commitments to provide funds or reimburse DLB; they did not even know about the 1996 applications and licenses until November 1997.[15] (Tr. 1117; 1320, 1322, 1436; 1762-65; 1845; 2029, 2053, 2099) Further, Jennifer was the only Sumpter ever to use DLB equipment, and her use of that equipment ended in 1992 following a sale of that asset (as well as others) to Fleet Call. (Tr. 566; 1046, 1094-95; 1180-87; 1342-45; 1743-44, 1791-94, 1905-09; 2020-21, 2024-25) Moreover, it was only after the Sumpters' receipt of the Net Wave petition that Ronald broached the subject of their radio usage as being DLB's payment to them. (Tr. 2206) Finally, the Sumpters merely provided accounting services, including tax advice, to DLB. In their capacities as licensees, the Sumpters never "approved" any purchase made by DLB. (Tr. 1738-40)

67. In addition to the claims already detailed, Ronald claimed at the hearing that, in February 1997, he turned off Norma's and Melissa's stations because Norma called, spoke to

[15] Patricia claimed that she and Ronald did not discuss funding with the Sumpters because everyone assumed that DLB would pay all costs associated with the applications and the licenses. (Tr. 817)

Carolyn Lutz, and directed him to do so.[16] (Tr. 477, 560-61) However, this testimony is contrary to the November 25, 1997, "Opposition" submitted by DLB, which reflects that all of the Sumpters' stations were among those that were "fully constructed, in operation, and fully loaded...." (EB Ex. 2, p. 2) Ronald's claim is also refuted by Norma, who specifically denied making such a call or even knowing about her station in February 1997, and by Carolyn Lutz, who did not recall receiving any instruction from Norma to turn off stations. (Tr. 1137-38; 2099) Indeed, Carolyn testified that she did not know that any of the Sumpters had stations or licenses until after she had read the Net Wave petition. (Tr. 1265)

Carolyn Sue Lutz

68. At various times, DLB, Ronald and/or Patricia have claimed or suggested that Carolyn functioned as a licensee. Specifically, in the November 25, 1997 "Opposition," Ronald indicated repeatedly that Carolyn (as well as various others) was the real party-in-interest with respect to her license. (EB Ex. 2, pp. 2-5) Moreover, more directly, the "Opposition" asserted that: "Each of the operators retains control of its own station(s)." (*Id.*, p. 3) In December 1998,

[16] To the extent that David's testimony about the impact of the loss of Norma's and Melissa's stations supports Ronald's claims, the Bureau notes, *inter alia*, that David did not begin full-time work at DLB until April, some two months after the stations were supposedly shut down. (Tr. 906-07, 1015-16, 1038-39) He thus would have had no apparent basis for comparing the effects of such a loss on DLB's business or customers. In addition, David read the Opposition (to the Net Wave petition) and agreed with it. (Tr. 912-14) As noted, the Opposition claimed that both Norma's and Melissa's stations had been constructed and were being supervised by their respective licensees. (EB Ex. 2, pp. 2-3) Finally, the Bureau notes that David admitted that he had no personal knowledge that Norma's and Melissa's stations were actually turned off; he so testified only because he had heard Ronald say it. (Tr. 1032)

Ronald's response to a Commission inquiry included the claim that: "Each licensee retained its right to sell, transfer, remove from management, or cancel its license at any time." (EB Ex. 17, p. 3) It also contended that licensees, including Carolyn, received and reviewed reports and/or otherwise supervised "their" respective stations. (EB Ex. 17, p. 4) In April 1999, DLB set forth criteria it used to determine prospective licensees, which, included, *inter alia*: an ability and willingness to perform the duties of a licensee; a willingness to participate in funding construction and operations; and a willingness to actively participate in sales of service and equipment. (EB Ex. 19, pp. 3-4) In that response, DLB also stated: "All other licensees participating in management agreements with DLB have provided substantial direction and supervision regarding the operation of the subject facilities." (EB Ex. 19, p. 5)

69. However, as made clear from the facts recited earlier, Carolyn never functioned as a licensee. She merely gave Ronald and Patricia permission to use her name and otherwise had nothing to do with "her" station except insofar as it pertained to her duties as a DLB employee. (Tr. 1191-93; EB Ex. 63) Moreover, she specifically denied ever discussing with anyone her willingness to take on the duties of a licensee. (Tr. 1215-18)

70. During the hearing, Ronald and Patricia asserted that Carolyn had approached Patricia about applying for a license at Allen. (Tr. 479, 542; 831-33) Patricia also testified falsely when she said that Carolyn got the idea while typing the list of addresses in EB Ex. 66. (Tr. 831-33) As noted, the true story is that Ronald approached Carolyn and asked her to apply

for the license. (Tr. 1162) Further, Carolyn agreed to do it as a favor to Ronald. (Tr. 1166-69) Moreover, in light of the foregoing, the Bureau submits that Carolyn did not type the list of addresses sent to John Black. Rather, as Carolyn testified, she would not have made (and did not make) the errors contained in that list, such as the inconsistent letter cases (sometimes small, sometimes all capitals) and wrong addresses (Norma's, Melissa's and one of David's). (Tr. 1219-26; EB Ex. 19, p. 229. *See also* Tr. 1265)

71. In its April 5, 1999, response to a Commission inquiry, DLB contended that each licensee (including Carolyn) had been informed that, by assigning her license, each would receive consideration in the form of goods and services from DLB. (EB Ex. 19, p. 10) Subsequently, DLB expanded on that story by claiming that Carolyn had previously received the use of "four mobile units with a value of approximately $3,600.00 and her air time usage is approximately $100.00 per month. The offer regarding the assignment would have produced a continuation of the use of this airtime and passage of title to the equipment." (*Id.*, p. 11) The truth was that no one had ever made such a promise to Carolyn, and she never received such equipment or service or anything else of value. (Tr. 514; 1176-79) Rather, as noted earlier, Carolyn had a single radio-phone in her car while she worked for DLB, which had been installed, at Patricia's suggestion, so that Patricia could reach Carolyn when Carolyn was running errands. (Tr. 1159-60, 1177-79)

David Brasher

72. The Net Wave petition erroneously assumed that D.L. Brasher was Diane. (EB Ex. 1, p. 3) In responding, Ronald did not address this point in the "Opposition," and David did not see any problem with it. (EB Ex. 2; Tr. 912, 914) In connection with DLB's response to the Commission's March 4, 1999, inquiry, David signed two management agreements with DLB, one as D.L. Brasher and one as David L. Brasher.[17] (EB Ex. 19, pp. 458-68, 486-96; Tr. 928-30) David viewed the agreements as simply correcting the situation. (Tr. 931) Moreover, David "breezed" but did not correct that response's erroneous claims that: David and Diane had been directors of DLB during the period January 1, 1995 to the date of the letter (April 5, 1999); "[a]ll other licensees [except the Sumpters] participating in management agreements with DLB have provided substantial direction and supervision regarding the operation of the subject facilities;" and "David and Diane Brasher have received six mobile units and one control station, with an installed value of approximately $5,000.00. Air time for David and Diane Brasher's system usage is approximately $175.00 per month. The offer regarding assignment would have produced a continuation of the use of this airtime and passage of title to the equipment." (Tr. 923, 940; 1608, 1612; EB Ex. 19, pp. 1, 5, 11) Diane received two radios; nothing more. (Tr. 1612)

[17] It appears that David disguised his handwriting on one of the agreements and in a related assignment application. (*Compare* EB Ex. 20, p. 11, *with* EB Ex. 20, p. 12)

73. David testified he did not read the *OSC/HDO* in great detail. He also testified that he did not even bother to look up the names of the licensees whose stations were discussed. (Tr. 947-49) Likewise, in responding to the Bureau's Request for Admissions, David made no effort to ascertain facts nor did he consult with anyone. (Tr. 941-42) David conceded that he had sufficient knowledge on November 17, 2000 (the date David answered the Admissions requests) to answer the requests correctly. (Tr. 949-50) David also acknowledged that he was the person in charge of running the stations managed by DLB and had been so in June 1999. (Tr. 957-59) Nonetheless, David sought to justify his Admissions responses by claiming that he relied upon the timeframe limitations of 1995, 1996 and/or June 1996 through June 1999, the last of which appeared in the first several requests, in formulating his answers to the remainder of the requests. Thus, David's answers supposedly reflected only the "realm of knowledge" that he would have had in 1995, 1996 or June 1996 through June 1999. (Tr. 944-50, 958-59)

74. Consequently, despite the fact that David began running DLB after Ronald "retired" in 1998, David professed not to know whether he used O.C.'s license in DLB's business operations; whether O.C. participated in or directed the operations of Station WPJR761; and whether O.C. signed a management agreement for Station WPJR761. (EB Ex. 31, p. 4; EB Ex. 32, p. 2; Tr. 79-89; 958, 960) David's Admissions responses should be considered in light of his role at DLB and his specific knowledge of his grandfather's death. (Tr. 950-51, 957, 964) Moreover, notwithstanding that David was always an officer of DLB and even though DLB named David as a director, David denied in its entirety request 2 that he was an officer and

Director of DLB from June 1996 through June 1999. (EB Ex. 19, p. 1 (response 2); EB Ex. 31, p. 1; EB Ex. 32, p. 1) David justified his denial by claiming he was not a director during the entirety of the period. (Tr. 941)

III. PROPOSED CONCLUSIONS OF LAW

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

75. In paragraph 11(b) of the HDO, the Commission designated the following issue for resolution:

> " To determine whether any of the . . . [designated] . . . 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. "

76. At paragraph 11(c) of the HDO, the Commission designated the following issue for resolution:

> 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;

77. As discussed below, the Bureau believes the evidence demonstrates beyond doubt that DLB was the real party-in-interest with respect to all of the applications that resulted in