

licenses to the captioned licensees. Consequently, DLB, through its corporate officers, Patricia, Ronald, David and Diane Brasher, abused the Commission's processes by filing applications in the names of surrogates. Moreover, following Commission grant of these applications, DLB maintained control notwithstanding the fact that many of the licenses were issued to entities other than DLB. Thus, DLB also violated Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), by failing to obtain Commission authorization prior to its exercise of control over licenses issued to others.

78. The test for determining whether an individual is a real-party-in-interest is whether that individual "has an ownership interest or is or will be in a position to actually or potentially control the operation of the station." *High Sierra Broadcasting, Inc.*, 96 FCC 2d 423, 427 (Rev. Bd. 1983). Clearly, with respect to the applications filed in the names of O.C. Brasher, Ruth Bearden, Jim Sumpter, Norma Sumpter, Melissa Sumpter, Jennifer Hill, Carolyn Lutz and Thomas Lewis, DLB was the real party-in-interest. In this regard, Ronald, DLB's 40 percent owner, prepared applications for O.C. Brasher and Ruth Bearden, his already deceased parents, and signed their names to those applications. Patricia, DLB's other owner, signed the checks needed to pay the fees, knowing that the licenses in question would be issued to her already-deceased in-laws. Likewise, Ronald caused applications to be prepared in the names of Jim Sumpter, Norma Sumpter, Melissa Sumpter and Jennifer Hill (collectively, the "Sumpters"). None of them signed his or her application, and none of them had any knowledge that DLB was preparing and filing an application in his or her name. DLB took the actions described above in

order to acquire additional spectrum to serve a new potential customer. Further, DLB acted as it did because of a belief that it could not have acquired those licenses in its own name. Finally, although both Carolyn and Thomas knowingly signed their applications, they did so merely as an accommodation to Ronald and DLB. Neither Carolyn nor Thomas had any intention of taking on the responsibilities of a Commission licensee, nor did they do so.

79. Having used surrogates (some dead, some alive yet unknowing) to acquire licenses DLB believed were otherwise unavailable to it, the Commission must conclude that DLB abused the Commission's processes with respect to the license applications filed in the names of O.C. Brasher, Ruth Bearden and the Sumpters.<sup>18</sup> Abuse of process is a broad concept that includes use of a Commission process to achieve a result that the process was not intended to achieve, or use of that process to subvert the purpose the process was intended to achieve. *Broadcast Renewal Applicants*, 3 FCC Rcd 5179, 5199 n. 2 (1988). “[I]t is an abuse of process to specify a surrogate to apply for a station so as to deny the Commission and the public the opportunity to review and pass on the qualifications of that party.” *Arnold L. Chase*, 5 FCC Rcd 1642, 1643 (1990). Further, where persons forge signatures on an application or knowingly file an application with a forged signature, such conduct constitutes an abuse of process because it “threatens the integrity of the Commission's licensing processes.” *Policy Statement on Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986) (“*Character Policy Statement*”) (subsequent history omitted).

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<sup>18</sup> The Bureau also believes it evident that DLB abused the Commission's processes with respect to applications filed in the names of Carolyn Lutz and Thomas Lewis. However, the Bureau also

80. Ronald, Patricia and David all understood that there was a limit to the number of licenses that could be obtained at the same time by any one entity. Ronald, at the least, further understood that there was a Commission limitation of one new T-band station per entity or individual until the channel was constructed and loaded. This Commission limitation arose from Section 90.313(c) of the Commission's rules, 47 C.F.R. § 90.313(c), which, in pertinent part, states, "A licensee will be required to show that an assigned frequency pair is at full capacity before it may be assigned a second or additional frequency pair." Because DLB desired to serve promptly two cement-hauling (or concrete) companies with approximately 700 mobiles, DLB personnel engaged in a scheme to avoid the § 90.313(c) limitation. To this end, DLB filed applications in the names of surrogates - O.C. Brasher, Ruth Bearden, Jim Sumpter, Norma Sumpter, Melissa Sumpter and Jennifer Hill.

81. Ronald and Patricia admitted that they filed applications in the names of O.C. Brasher and Ruth Bearden even though Ronald and Patricia knew that O.C. and Ruth were deceased. Ronald further admitted that he signed the names of O.C. and Ruth on the applications in 1996. Patricia admitted knowingly signing checks for Commission licensee fees to go with those applications. Further, with respect to the O.C. Brasher application, the Commission must conclude that Ronald filed the application in O.C.'s name because he (Ronald) believed that he, Patricia and DLB were not eligible for any more channels in their own names. Moreover, although Ronald claimed at hearing that he submitted Ruth Bearden's forged application to

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recognizes that the designated abuse of process issue does not include those applications.

obtain a license for an uncle who could not get one in his own name because he was a felon - rather than in furtherance of a plan to acquire the license for DLB's benefit - the end result is still an abuse of process. In any event, as discussed above, the evidence demonstrates that Ronald submitted the forged Ruth Bearden application to obtain a license for DLB's use at a time when Ronald, Patricia and David understood that DLB could not obtain as many as it needed in its own name. Thus, the Commission must conclude that DLB abused the Commission's processes with respect to the applications filed in the names of O.C. Brasher and Ruth Bearden. Likewise, abuse occurred when Ronald signed Ruth's name to the 1994 assignment application for Station KCG967.

82. Also, as discussed above, the record demonstrates that the Sumpters did not sign the applications bearing their names. Moreover, although it could not be determined who, in fact, signed the Sumpters' names, it appears that Ronald, at the least, dated Jim's application. It is therefore probable that, at a minimum, both Ronald, who was handling the 1996 expansion licensing for DLB, and Patricia who was writing the checks for those applications and who also claimed to witness the Sumpter women sign their Client Copies, knew that the Sumpters' signatures were forged.

83. In any event, no matter who signed the Sumpters' applications, the Commission must conclude that Ronald and Patricia improperly used the Sumpters as surrogates to obtain licenses for DLB that DLB could not obtain in its own name. While Jim and Norma were knowledgeable

about certain aspects of DLB's business, due to their role in performing DLB accounting work, the evidence overwhelmingly shows that the Sumpters did not have any involvement with their applications. In light of all the above, it follows that DLB abused the Commission's processes by filing the 1996 applications in the names of the Sumpters.

84. While it is also clear that David abused the Commission processes by participating in the filing of applications in the names of David Brasher and D.L. Brasher, that issue is not before us. Nevertheless, the Commission must further conclude that David, as an officer of DLB, was involved in DLB's abuse of process with respect to the 1996 applications filed in the names of O.C., Ruth Bearden and the Sumpters. It is clear that David participated in discussions in 1996 regarding DLB's need for additional spectrum and DLB's planned expansion.

85. Similarly, there is substantial evidence that Diane was involved in DLB's policy and management decisions - even discussions regarding DLB's 1996 expansion. She was an officer and employee of DLB in 1996 and testified that the business of DLB was, and is, a constant topic of conversation among the Brashers.<sup>19</sup> Additionally, she is responsible for DLB's accounting practices as well as the accounts receivable and the accounts payable. It follows that she must have been aware of the licensing fees being paid by DLB on behalf of the 1996 licensees. These circumstances constitute substantial circumstantial evidence that Diane, at a minimum, acquiesced to the abuse of process by DLB and the other Brashers.

86. Section 310(d) of the Communications Act (“Act”), 47 U.S.C. 310(d), requires that a party submit an application to, and obtain approval from, the Commission before that party may acquire any of the rights to the license sought. Further, the statute provides that such application will be granted only after the Commission finds that the public interest, convenience, and necessity will be served by the transfer requested.

87. Section 310(d) prohibits *de facto*, as well as *de jure*, transfers of control without Commission approval. See *Lorain Journal Co. v. FCC*, 351 F.2d 824, 828 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966). With respect to a non-broadcast license, the Commission frequently uses the test announced in *Intermountain Microwave*, 24 RR 983 (1963) (“*Intermountain*”) to determine whether *de facto* control has been transferred in violation of Section 310(d) of the Act.<sup>20</sup> Under *Intermountain*, the six indicia of *de facto* control are: (a) Does the licensee have unfettered use of all facilities and equipment? (b) Who controls daily operations? (c) Who determines and carries out the policy decisions, including preparing and filing applications with the Commission? (d) Who is in charge of employment, supervision, and dismissal of personnel? (e) Who is in charge of the payment of financing obligations, including expenses arising out of operating? (f) Who receives monies and profits from the operation of the facilities?

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<sup>19</sup> See Tr. 1549-50.

<sup>20</sup> See *Telephone and Data Systems, Inc. v. FCC*, 19 F.3d 42 (D.C. Cir. 1994), which arose from an appeal of the Commission’s decision in *Ellis Thompson Corp.*, 7 FCC Rcd 3932 (1992). See also *Norcom Communications Corporation*, 13 RCC Rcd 21483 (1998); *LaStar Cellular Telephone Co.*, 5 FCC Rcd 3286 (1990).

88. Although the Commission indicated in the *OSC/HDO* that the Presiding Judge should consider the *Intermountain* factors in determining whether a *de facto* transfer of control occurred, the Commission commented in a recent Policy Statement<sup>21</sup> that the test enunciated in *Applications of Motorola, Inc. for 800 MHz Specialized Mobile Radio Trunked Systems*, File Nos. 507505 *et al.*, Order (issued July 30, 1985) (“*Motorola*”), attached hereto, is used to determine whether a transfer of control has occurred with regard to private radio licenses. The *Motorola* test provides that no transfer of *de facto* control occurs where the licensee maintains “a proprietary interest, either as owner or lessee, in the system’s equipment and exercises the supervision the system requires” over a third party manager.<sup>22</sup> *Id* at 8.

89. In the current case, it is appropriate, although perhaps misleading, to conclude that an “unauthorized transfer of control” occurred. In this regard, the evidence is overwhelming that O.C. Brasher, Ruth Bearden, Norma Sumpter, Jim Sumpter, Melissa Sumpter, Jennifer Hill and Carolyn Lutz (collectively, “the 1996 licensees”) *never* had control over their applications or their licenses. Rather, as discussed above, DLB was the real-party-in-interest with respect to all

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<sup>21</sup> *In The Matter Of Principles For Promoting The Efficient Use Of Spectrum By Encouraging The Development Of Secondary Markets*, 2000 WL 1760080 at ¶28, 22 Communications Reg. (P&F) 791 (2000).

<sup>22</sup> In *Motorola* there were no issues as to whether the licensee, Comven, signed its license applications and operated its stations prior to entering into management agreements with Motorola. Moreover, the Commission determined that unauthorized transfers of control had not occurred following execution of management agreements because Comven, the licensee, continued to own the controllers and transmitters (“necessary radio equipment”) and continued to exercise over-all supervision over the operations of its SMR system even though Motorola ran the day-to-day operations of the stations.

of the applications filed in the names of the 1996 licensees, and it continued to control the stations ultimately built and operated in the names of the 1996 licensees. Moreover, even if one somehow found that the Sumpters authorized the signing of their 1996 applications, DLB exercised *de facto* control over the Sumpters' stations without having obtained Commission approval to do so under both the *Intermountain* and the *Motorola* tests. More significantly, as discussed in greater detail in the next section herein, DLB's written submissions and testimony given by the Brashers reveal that DLB, through Ronald, Patricia and David, contain numerous false and misleading statements, which were designed to disguise DLB's control of stations licensed in the names of the 1996 licensees.

90. As to whether DLB repeatedly violated Section 310(d) of the Act, the Bureau notes at the outset that both Ruth Bearden and O.C. Brasher were deceased when Ronald, on behalf of DLB, prepared, signed and submitted their 1996 applications, and when the Commission granted their licenses. Moreover, obviously, neither Ruth nor O.C. had anything to do with the subsequent decisions to build and/or operate her or his station. Rather, DLB made those decisions. Likewise, the findings demonstrate that the Sumpters did not sign the applications submitted in their names, did not discuss those applications with John Black, the person who prepared their applications, and did not submit the applications to the Commission. Rather, DLB filed the Sumpters' applications, built the stations, and operated them. Finally, although Carolyn Lutz signed her own application to acquire the license for what became Station WPJR763, she did not control that station. Rather, DLB did.

91. The evidence shows that the Brashers and DLB own all of the equipment used to construct and maintain the stations licensed to the 1996 licensees.<sup>23</sup> The Brashers and DLB paid all costs and financing obligations associated with the construction and operation of those stations, including the costs of locating spectrum, preparing and filing applications, installing and maintaining the equipment, loading the stations, billing customers, collecting from customers, staffing and accounting services.<sup>24</sup> The 1996 licensees did not receive revenue from their stations, money for the use of their licenses, or money for assigning their licenses to DLB. Rather, DLB received all the revenue from the operations of those stations.<sup>25</sup> Finally, the Brashers and DLB control the daily operations of those stations,<sup>26</sup> including the hiring and firing of personnel.<sup>27</sup>

92. In addition to the above, the evidence supports a finding that the 1996 licensees do not, and have not, had “unfettered use of all facilities and equipment.”<sup>28</sup> Although *some* of the

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<sup>23</sup> This fact alone demonstrates that DLB exercised *de facto* control over the 1996 licensees under the *Motorola* standard.

<sup>24</sup> *Intermountain*, Criteria (e).

<sup>25</sup> *Id.*, Criteria (f).

<sup>26</sup> *Id.*, Criteria (b).

<sup>27</sup> *Id.*, Criteria (d). Other than one very half-hearted attempt by Patricia to claim that Jim had input into some of the firing decisions, Ronald and Patricia admitted that they are in charge of hiring and firing DLB staff. (Tr.164-165; 814)

<sup>28</sup> *Id.*, Criteria (a).

1996 licensees *may* have had *some* access to DLB's offices during normal business hours, such access cannot be reasonably be found to constitute "unfettered use of all facilities and equipment." The business was DLB's, and the 1996 licensees never had any decision-making authority with respect to the operation of "their" stations. Further, the evidence shows that 1996 licensees do not and have never had unfettered use of the Allen site and the equipment located there. Most of the 1996 licensees did not even know of the site's existence until late 1997 or later, and none have visited it or been given information regarding its location and/or how to access it.<sup>29</sup>

93. The 1996 licensees also had no say in determining or carrying out the policy decisions of DLB.<sup>30</sup> In their testimony and documents submitted to the Commission, the Brashers have admitted that they determined the management policies of DLB, including: what frequencies to apply for; the names of the applicants for those frequencies; how to complete the applications for those frequencies; the locations of the stations applied for; and the types of equipment to be used. The only testimony contrary to that admission was Ronald's and Patricia's testimony that they relied upon business advice from Jim. Specifically, they testified that they consulted Jim about: how to set up their financial records; when to time purchases for tax purposes; and how to determine if DLB had sufficient funds to make those purchases at any

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<sup>29</sup> In addition, Ronald and David each testified that they had not shown the Allen site to the Sumpters or provided them with the combination to the lock at the Allen site. (Tr. 452; 985-86) Patricia acknowledges that she had never taken the Sumpters to the Allen site and that the Sumpters would not have known what they were looking at had they gone there. (Tr. 870-71)

<sup>30</sup> *Id.*, Criteria (c).

specific time. In addition, DLB sought Jim's advice regarding other tax matters. The Bureau submits that these areas constitute purely accounting functions that all of DLB's current and former accountants have performed and do not rebut Jim's testimony that he performed only accounting services and dispensed only accounting-related advice for DLB and that he never participated in DLB's management decisions.

94. In an attempt to make it appear that the Sumpters knew about, and exercised control over, their stations prior to the Net Wave petition, Ronald testified that Norma instructed him to turn off her and Melissa's stations in February 1997. This testimony, however, is not credible. Norma and Melissa repeatedly deny any knowledge of their 1996 licenses until after they read about them in the Net Wave Petition, filed November 17, 1997. Further, Ronald's testimony that Norma called Carolyn and instructed him to turn off her and Melissa's stations was specifically denied by Norma and contrary to other submissions made by DLB. Specifically, in its November 25, 1997 *Opposition*, verified by Ronald, DLB stated that "all of the stations (except Bearden's station WPJR762, which is not currently in service) are fully constructed, in operation, and fully loaded in excess of 90 units per channel." (EB Ex. 2, p. 2) Similarly, in his December 7, 1998 response to a Commission's inquiry, Ronald listed both Norma's and Melissa's stations as ones then being managed by DLB. (EB Ex. 17, p. 3) It seems most unlikely that the *Opposition* would reveal that Ruth Bearden's station was not in operation but not reveal that Norma's and Melissa's stations were also not operating at that time if that indeed were the case. Likewise, it makes no sense that the stations would have been shut down in February 1997 only to be turned back on

shortly thereafter. Finally, Carolyn provided no support for Ronald's tale. In short, Ronald's story is unbelievable and lends no support to the notion that Norma and/or Melissa ever requested that her station be turned off or otherwise exercised control over her station.<sup>31</sup>

95. In sum, DLB exercised *de facto* control over the licenses of the 1996 licensees, under either the *Intermountain* or *Motorola* test, since the grant of those licenses. The aforementioned discussions show that *none* of the 1996 licensees: (a) has ever had unfettered use of all facilities and equipment; (b) has ever had control the daily operations of their stations; (c) has ever determined or implemented policy decisions affecting their stations; (d) has ever been in charge of the employment, supervision or dismissal of station personnel; (e) has ever been responsible for paying financial obligations, including expenses, arising out of the operations of their stations or has ever invested any monies or had any proprietary interest in the stations; or (f) has ever received monies or profits from the operation of their stations. Accordingly, the Commission must conclude that DLB violated Section 310(d) of the Act with respect to its operation of stations licensed to O.C., Ruth, the Sumpters, and Carolyn Lutz.

#### **B. Issue (a): Misrepresentation and Lack of Candor**

96. Paragraph 11(a) of the *OSC/HDO* designated the following issue for resolution:

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<sup>31</sup> Although David also testified that Norma's and Melissa's stations were turned off, he admitted that he had no personal knowledge regarding those facts and that he so testified only because he had heard Ronald say it. (Tr. 1032)

(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.

97. Misrepresentation involves a false statement of fact made with intent to deceive. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). Lack of candor involves concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive. *Id.* Intent can be shown in many ways. If a party makes a false statement that he knows is false, that is sufficient proof of intent to deceive. "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co. Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980). Intent to deceive can also be inferred when a party has a clear motive to deceive. *See, e.g., RKO General, Inc.*, 4 FCC Rcd 4679, 4684 (Rev. Bd. 1989). Moreover, intent can be found when the surrounding circumstances clearly show the existence of intent to deceive, even if there is no direct evidence of a motive. *American International Development, Inc.*, 86 FCC 2d 808, 816 n.39 ("The Board is correct that the absence of direct evidence of motive is not significant where the record otherwise clearly establishes that deceptive conduct has occurred.")

98. As will be discussed further below, the evidence establishes that DLB, through its agents, Patricia, Ronald and David Brasher, made numerous untruthful statements, both written and oral, to the Commission. Virtually all of the untruthful statements arose from a motive to acquire more spectrum at one time than what the Commission was likely to allow and then protect its continued use of that spectrum. In 1996, DLB had an immediate need for more 470-

512 MHz channels than it could likely obtain in its own name. Consequently, DLB applied for spectrum in the names of the Brashers' deceased and living relatives in order to evade the strictures of Section 90.313(c) of the Commission's rules, 47 C.F.R. § 90.313(c). After the Net Wave petition prompted the Commission to investigate, *inter alia*, real-party-in-interest questions, the Brashers' stories, never fully complete and truthful, continued to evolve to make it appear that DLB was merely managing stations licensed to others who were legitimate licensees. At no time, however, did DLB come forward with the whole truth, even during testimony given during the hearing. In sum, DLB repeatedly misrepresented facts to and lacked candor with the Commission.

#### **i. Misrepresentations/Lack of Candor in the Application Process**

99. In 1996, DLB lied to the Commission that O.C. Brasher and Ruth Bearden were viable applicants for FCC licenses when DLB submitted license applications in their names to the Commission. Both Ronald and Patricia knew that both O.C. and Ruth were dead, and thus ineligible for licenses in their own names. In December 1997, Ronald continued the charade by submitting FCC Form 800A on behalf of O.C. and indicating thereon that O.C. had constructed his station. Finally, on September 1, 1998, Ronald filed an application to assign O.C.'s station to DLB and included therewith a certification purportedly signed by O.C. Only after DLB knew that the Commission had been informed of their deaths, did DLB acknowledge in October 1999, that O.C. and Ruth had died well before any of the applications noted above had been prepared and filed. Even then, DLB and its officers did not volunteer that information; rather, they were

forced to admit it because the Commission's September 9, 1999 inquiry letters, to which they were responding, specifically asked whether Ruth and O.C. were deceased. In light of the foregoing, the Commission must conclude that DLB repeatedly misrepresented facts and lacked candor by representing that O.C. and Ruth were alive and by failing to inform the Commission in various applications that DLB was the real-party-in-interest of those applications.

100. In 1996, DLB also prepared and filed fictitious applications in the names of the Sumpters. DLB filed the applications even though it knew that the Sumpters had not specifically authorized the applications in question and had no intention of assuming the duties of a licensee in the event of grant. Once again, DLB misrepresented facts and lacked candor by signing applications in the names of the Sumpters and by failing to disclose its interest in those applications.

101. In 1996, DLB submitted applications in the name of Carolyn Sue Lutz, David Brasher and D.L. Brasher. DLB did so notwithstanding that Carolyn had no intention of functioning as a licensee. Moreover, although David was an officer of DLB, he was then working for IBM and had no intention of operating either of the stations for which he applied. Rather, DLB intended to operate the stations in accordance with its business needs. Moreover, with respect to David's efforts, the Commission should note that not only did he use two different names, he further tried to disguise the situation by using two different addresses. In addition, David and/or his father, Ronald, tried to continue the charade when the 1998

assignment applications were filed through the use of different signatures and different dates. Thus, again, the Commission must conclude that DLB lacked candor in failing to disclose the true situation with respect to Carolyn's and David's applications.

**ii. Misrepresentations/Lack of Candor in Opposition to Net Wave Petition**

102. The Net Wave petition alleged, *inter alia*, that the 1996 applications filed on behalf of O.C., Ruth, the Sumpters and Carolyn failed to disclose the real party-in-interest, DLB. In order to defeat this claim, the Opposition submitted by DLB made it appear that each named licensee subscribed to it. As the evidence demonstrates, that was not the case inasmuch as it was impossible for O.C. and Ruth to have done so and the Sumpters did not authorize or otherwise ratify the Opposition. Further, by claiming that nothing prevented each operator from holding one or more licenses and by claiming that each operator retained control of his or her own station, DLB knowingly made false statements of fact. Obviously, DLB knew that O.C. and Ruth could not hold a license in his or her own name, and also, obviously, DLB knew that O.C., Ruth, the Sumpters, and Carolyn did not control their own stations. Thus, DLB repeatedly misrepresented facts. In addition, DLB lacked candor by failing to disclose that D.L. was not Diane and the David and D.L. were the same person.

### **iii. Misrepresentations/Lack of Candor in Responses to Commission Inquiries**

103. The first Commission inquiry letter directed to DLB, dated November 9, 1998, sought to determine whether the various named licensees were operating in accordance with the Communications Act and the Commission's rules. DLB's December 1998 response related that it had taken certain actions with respect to each licensee; that each licensee retained certain rights; and that each licensee had been responsible for reviewing and signing its own application. As the evidence reveals, these assertions were false. Specifically, DLB did not inform O.C. and Ruth about anything; O.C. and Ruth did not retain any rights (they never had any to begin with); and O.C., Ruth, and the Sumpters did not review or sign their own applications. In addition, DLB knew the assertions were false, and the evidence demonstrates that its motivation was to put an end to any Commission investigation before it could uncover the truth. Finally, DLB's response continued to convey the misimpression that David and D.L. were separate licensees and that D.L. was Diane.<sup>32</sup>

104. In March 1999, the Commission sent a second, more detailed, inquiry to DLB, again to determine whether DLB was violating the Act or the rules. In April 1999, DLB submitted a 13-page response, followed by more than 600 pages of exhibits. In its response, DLB continued falsely to suggest that O.C. and Ruth had been alive at the time their applications were prepared and signed and that O.C. was still alive and actively managing his license, even to the point of submitting a management agreement that bore O.C.'s name. With respect to the Sumpters, DLB

created out of thin air an elaborate scenario, describing in detail a proposal, the Sumpters' acceptance thereof, and DLB's efforts to ensure that the Sumpters could discharge their duties as licensees. Likewise, with regard to Carolyn, DLB falsely declared that she knowingly accepted and fulfilled her licensee responsibilities. Finally, to disguise the real reason for various assignment applications, DLB concocted stories about the numbers of facilities and their related value that the Sumpters, Carolyn, David and Diane had used and would continue to use if the assignments were granted. In so answering, DLB knew as to each matter referenced above that its response was false. DLB further knew that it responded as it did in order to convince the Commission that, at worst, "DLB's efforts may have involved some immaterial technical violation of the Commission's rules regarding reducing to writing the specific terms of management agreements..." (EB Ex. 19, p. 12) In sum, DLB's response was riddled with false statements, some of which lacked candor, others of which were outright lies.

105. After Jim Sumpter informed the Commission that O.C. and Ruth were deceased, the Commission's September 1999 inquiries sought to verify that information as well as determine who had significant roles in the preparation and filing of their 1996 license applications and the 1998 assignment application for O.C.'s station. In her October 1999, response, Patricia falsely claimed to have no role although she wrote the checks for the application fees for all three applications. In his response, Ronald lacked candor by failing to explain his role in the preparation of the 1996 license application filed in the name of O.C. In addition, Ronald either lacked candor or misrepresented facts by falsely claiming that the 1998 assignment application

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<sup>32</sup> See EB Ex. 17, pp. 3, 5-6 (responses 1(a), 2(a), 2(f), 2(g), 2(i) and 2(k)).

from O.C. followed Ronald becoming executor of his late father's estate. The record reflects that Ronald never became executor; indeed, there is nothing to support his suggestion that O.C. had a will, much less that Ronald was named as executor or that DLB was named as an heir.<sup>33</sup> Further, Ronald's response was misleadingly incomplete in that he failed to advise the Commission that he had signed O.C.'s name to both the 1996 license application as well as the 1998 assignment application. With respect to Ruth's application, Ronald has been unable to decide what story to tell the Commission. In his October 1999 response, Ronald averred that application named Ruth by mistake and that he called the Commission to cancel the application. In subsequent testimony, Ronald declared that Ruth's application was on behalf of an uncle, who could not acquire a station in his own name because he was a felon. Both stories cannot be accurate, and neither is convincing when one considers that DLB sought to acquire the frequencies previously licensed to Ruth almost immediately after the cancellation of her license. Hence, it must be concluded that one or both of Ronald's tales constitute misrepresentations.

#### **iv. Misrepresentations/Lack of Candor in Hearing Proceeding Submissions and in Testimony**

106. In addition to the false statements in documents submitted to the Commission, Ronald, Patricia and David did not fully and truthfully respond to the Bureau's Admissions requests and/or in their testimony. Clearly, the Brashers' additional deceptions resulted from

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<sup>33</sup> Ronald's asserted reliance during the hearing on a Power of Attorney also fails for at least two reasons. First, his father executed the cancellation paragraph on the very day that document was originally executed. Second, there is nothing in the record to suggest that the Power of Attorney survived O.C.'s death.

their desire to disguise the extent of their wrongdoing.

107. As noted above, the Commission must conclude that Ronald testified falsely about the reasons for Ruth's 1996 license application. In addition, the Commission must conclude that he testified falsely when he claimed that he never received a license for Ruth Bearden and that he did not know that the license had been canceled. Not only does the evidence show that Ronald received the license and cancellation notice, it also shows that he used them in connection with a request for a new license for DLB less than a month after the Commission had canceled the Ruth Bearden license for failure to construct the station.

108. The evidence further establishes that Ronald and Patricia repeatedly lied about the circumstances related to the preparation, signing and filing of the Sumpters' 1996 license applications. In weighing the evidence, the Commission must recognize at the outset that there is a clear testimonial conflict between the Brashers and the Sumpters as to the events preceding the filing of those applications. The Brashers maintain in quite some detail that the Sumpters authorized and signed their applications; the Sumpters maintain they did not. Both versions cannot be accurate, and the differences are too stark to attribute to faulty memories. Considering, *inter alia*, that the handwriting expert testified that the Sumpters did not sign their applications and that Ronald dated Jim's application, the Commission must conclude that the Sumpters told the truth, while the Brashers did not. Further support for this conclusion flows from the testimony and documentary evidence attendant to the signing of the "Client Copies." Once

again, there is a clear conflict between the testimony of the Brashers and the Sumpters as to where and when the copies were signed. However, as before, the nod must go the Sumpters as they were able to demonstrate that Jim and Norma were visiting a sick aunt hundreds of miles away from the site at the time their copies were supposedly signed. In addition, the handwriting expert's observations about the "Client Copies" indicate that signatures were lifted from other documents. Indeed, once DLB obtained signatures from the Sumpters in early 1998, it had the means to lift such signatures and place them on other documents. In sum, the evidence leads to the conclusion that the Brashers lied and lied repeatedly in claiming that the Sumpters signed their 1996 original applications and respective "Client Copies."

109. In an attempt to show that some of the Sumpters maintained control over their stations, Ronald testified that, in February 1997, he turned off Norma's and Melissa's stations pursuant to a request from Norma. The Commission must conclude that this testimony was false. First, neither Norma nor Carolyn, who supposedly relayed Norma's request, remembers any such directive. Second, had they been turned off, it makes no sense that those stations were once again in operation by November 1997 when Ronald subscribed to the "Opposition," which indicated that all of the Sumpters' stations were fully constructed, in operation, and fully loaded. Finally, all of the Sumpters have been consistent throughout this proceeding and the investigation that preceded it in maintaining that they did not even *know* about their stations until they received copies of the Net Wave petition.

110. In discussing station operations, Ronald and Patricia lacked candor when they testified that everyone assumed that DLB would bear all costs related to the stations licensed to the Sumpters. The fact of the matter is that the Sumpters did not know about their stations. Thus, no one assumed anything. Moreover, this testimony is directly at odds with and no more truthful than assertions made by DLB in April 1999 when it claimed that the Sumpters were chosen as potential licensees, in part because of their commitment to fund the stations.

111. Ronald and Patricia also misrepresented facts when they testified that Carolyn approached Patricia about applying for a license at Allen and when Patricia testified that Carolyn got the idea for applying while typing the list of addresses sent by Ronald to John Black. The weight of the evidence indicates that Carolyn's involvement in the 1996 license applications resulted from Ronald asking her to participate and that Carolyn did not type the list of addresses. Clearly, Ronald's and Patricia's spin was intended to make the Commission believe that DLB was not the real party-in-interest in Carolyn's application

112. DLB's testimonial misrepresentations and lack of candor were not limited to Ronald and Patricia. At the hearing, David gave dubious testimony about the reasons underlying the filing of the 1996 license applications in the names of David and D.L. Brasher. As noted, he claimed that the two filings resulted from an effort to hide assets from his wife in the event of a divorce proceeding. Although the evidence does not clearly show that he and his wife were then free of marital difficulties, the Commission must conclude that the real reason for the double

filings was to assist DLB's acquisition of additional spectrum. Indeed, once the Commission granted the applications, DLB constructed the stations and operated them as its own.

113. David was also less than candid at the hearing in trying to explain his signing of management agreements in March 1999 and his failure to correct erroneous claims in DLB's April 1999 response to a Commission inquiry. As to the first matter, the Commission cannot take seriously that he signed the agreements simply to correct the underlying situation. Rather, the Commission must conclude that David signed the agreements because the Commission was inquiring as to whether the named licensees, including David and D.L., had control of their stations. Signing two agreements, using two different names and two different dates, can only be viewed as a facile attempt to hide the facts that DLB was controlling the stations and that David and D.L. were the same person. Regarding the second matter, the Commission should not accept that David was unaware of the response's false claims. By April 1999, David had been at DLB full-time for nearly two years and had been aware of the Net Wave petition and resulting Commission inquiry. It simply defies belief that David would not have known about and understood the implications of a Commission inquiry as to whether DLB was controlling stations without Commission authority. It further defies belief that he had virtually no knowledge that DLB's responses contained false and misleading statements. The Commission should reject emphatically David's testimony as to these matters.

114. Finally, David was disingenuous at the hearing in trying to explain his responses to

the Bureau's Request for Admissions. As the evidence reflects, his responses to request 2,<sup>34</sup> and to requests 34-36, in particular, are flatly wrong. First, he was an officer throughout the period in question. Second, David must have known that O.C. had no role whatsoever in the construction or management of "his" stations. As noted, David knew that his grandfather died in August 1995. As of April 1997, David was a full-time employee. Thus, no later than the time of the Net Wave petition in November 1997, David would have known that DLB was operating, *inter alia*, a station licensed to O.C. and that Net Wave's petition was accurate at least with respect to O.C.'s license. Thus, by failing to acknowledge as much in Admissions responses and then uttering nonsense at the hearing as a rationale for his inaccurate responses, David has demonstrated that he, too, has chosen to follow in his parents' footsteps when it comes to lying to the Commission.

### **C. Issues (d), (e) and (f): Ultimate Conclusions**

115. In the *OSC/HDO*, the Commission designated the following ultimate issues:

(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;

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<sup>34</sup> David's unequivocal denial ignores the requirements of section 1.246(b) of the Commission's rules, 47 C.F.R. § 1.246(b), which provides: "A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of its as true and deny only the remainder."

(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.

116. The Commission must conclude that Ronald and Patricia Brasher and the corporation they own and control, DLB Enterprises, Inc., d/b/a Metroplex Two-Way Radio, are not qualified to remain or be Commission licensees. The record demonstrates beyond doubt that they lack the necessary traits of reliability and truthfulness. *Character Policy Statement*, 102 FCC Rcd at 1190, 1210. First, they abused the Commission's processes by using surrogates to apply for and obtain licenses, and, in so doing, forged the names of others to license and assignment applications. Second, they controlled and continue to control stations without proper Commission authorization. Finally, they repeatedly misrepresented facts and lacked candor in their dealings with the Commission. Their acts of deceit occurred not only in written submissions to the Commission but also in testimony in this proceeding. Their deceptions were calculated and made to further a scheme to acquire and control more private land mobile licenses than the rules allowed. Their deceptions were not brief or isolated; they were repeated over a five-year period and continued through the hearing in this proceeding. By their behavior, Ronald, Patricia and DLB have shown beyond doubt that they will break rules when convenient and that they will not supply accurate information. Further, when confronted with their misconduct, they will fail to tell the truth in order to cover up their misdeeds.

117. Likewise, the Commission must conclude that David Brasher, an officer of DLB

and the current manager of its business, is unfit to be a Commission licensee. He, like his parents, lacks the traits of truthfulness and reliability. First, he submitted license applications under two different names for the benefit of DLB, thus becoming a party to DLB's abuses of the Commission's processes. Second, he is currently operating DLB's ill-gotten licenses, including one in the name of his deceased grandfather. Finally, he participated in the submission of false statements to the Commission, filed misleading responses to Admissions requests, and gave untruthful testimony in this proceeding.

118. The Commission's scheme of regulation rests upon the assumption that applicants and licensees will supply accurate information to the Commission. *Character Policy Statement*, 102 FCC 2d at 1210. In this regard, *all* licensees are required to tell the truth. *1990 Character Policy Statement*, 5 FCC Rcd 3252, 3253 (1990). "The requirement for absolute truth and candor from those appearing before the Commission is fundamental because the Commission must rely on the completeness and accuracy of the submissions made to it by applicants." *Liberty Cable Co., Inc.*, 15 FCC Rcd 25050, 25071 (2000), *recon. denied*, FCC 01-240, released August 30, 2001, *citing Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *Sea Island Broadcasting Corp. v. FCC*, 627 F.2d 240, 243 (D.C. Cir.), *cert. denied*, 449 U.S. 834 (1980). The Commission has far too many licensees and applicants to independently investigate each and every filing and claim made by those parties. If the Commission cannot believe and rely on its licensees' reports, it cannot maintain the integrity of its processes. *Tri-State Broadcasting Co., Inc.*, 5 FCC Rcd 1156, 1173 (Rev. Bd. 1990).

119. When confronted with serious wrongdoing as it is now, the Commission possesses broad discretion to choose remedies and sanctions. *See KQED, Inc.*, 3 FCC Rcd 2601, 2608 (Rev. Bd. 1988) (subsequent history omitted); *Character Policy Statement*, 102 FCC 2d at 1211. In determining appropriate sanctions, the Commission has considered among other things: the nature of the statutory, rule or policy violation; the frequency of the violation; the willfulness of the violation; the currency of the violation; the presence or absence of deceptive intent; the presence of any other circumstances that reveal whether the purpose of the conduct at issue was obstructive, delaying or abusive; and what action is necessary to deter future misconduct. *See Rainbow Broadcasting Company*, 9 FCC Rcd 2839 (1994); *KQED, Inc.*, 3 FCC Rcd at 2608; *Character Policy Statement*, 102 FCC 2d at 1210, n. 76, 1224, n. 103, 1227-29.

120. Here, as described above, DLB has repeatedly abused the Commission's processes; repeatedly violated Section 310(d) of the Communications Act by controlling licenses without having received authority to do so; and repeatedly misrepresented facts and lacked candor in both written and oral submissions to the Commission. In addition, Ronald Brasher, Patricia Brasher and David Brasher have each committed misrepresentations and lacked candor. The violations go to the heart of the Commission's scheme of regulation. They were frequent, willful, resulting from deceptive intent, and abusive. Only the most serious sanction will suffice to deter misconduct of this magnitude. Consequently, the Commission must revoke all of their licenses and deny all of their captioned applications. *See, e.g., Liberty Cable Co., Inc.*, 15 FCC Rcd at

25073; *Black Television Workshop of Los Angeles, Inc.*, 8 FCC Rcd 4192, 4198 (1993). *See also* 47 U.S.C. § 312(a)(1).

#### **D. Forfeiture**

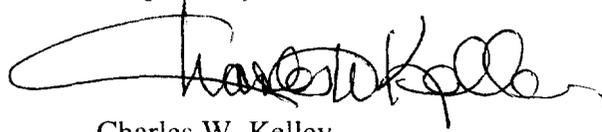
121. The *OSC/HDO* also requires a determination, irrespective of the resolution of issues (a) through (f), as to whether a forfeiture should be imposed for violations of Section 310(d) of the Act. As discussed above, the principal violator is the corporate entity, DLB, which has controlled captioned stations licensed to others from the dates they were first placed in operation. Additional violators include Ronald, Patricia and David Brasher, each of whom obtained licenses in his or her own name, which were controlled by DLB. Although the initial date of operation of each such station is not apparent, the evidence shows that the stations captioned in DLB's November 1997 "Opposition" were operating and under DLB's control by the date of that pleading. It thus appears that DLB's violations were willful, repeated, intentional and ongoing, and spanned a period of more than three years. Given the foregoing and considering that DLB's annual gross income is approximately \$2 million, the Bureau recommends imposition of a forfeiture of \$82,500, the maximum potential forfeiture liability for a party as specified by the *OSC/HDO* and Section 503(b)(2)(c), as modified by the Debt Collection Improvement Act of 1996, Public Law 104-134 (110 Stat. 1321-358). *See also* Section 1.80(b)(5)(iii) of the Commission's rules, 47 C.F.R. § 1.80(b)(5)(iii). However, considering the potential loss of the licenses, the potential demise of DLB's business, and the forfeiture against DLB, the Bureau does

not recommend forfeitures against the Brashers individually.

**E. Conclusion**

122. In sum, the Bureau recommends: revocation of all captioned licenses that have not already been certified to the Commission; denial of all applications; and a forfeiture of \$82,500 against DLB.

Respectfully submitted,



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September 14, 2001

**CERTIFICATE OF SERVICE**

I, Karen Richardson, secretary of the Investigations and Hearings Division, Enforcement Bureau, certify that I have, on this 14th day of September, 2001, served, by the method indicated, copies of the foregoing "Enforcement Bureau's Proposed Findings of Fact and Conclusions of Law" to:

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\_\_\_\_\_  
Karen Richardson