

(Tr. at 815.)

57. When Pat spoke with Norma around February or March of 1996 (Tr. at 810.), Norma told Pat that Norma and Jim would be interested in the licenses and that Norma would “cover it with Jim.” (Tr. at 401.) Pat also asked Norma if Melissa and Jennifer would be interested in obtaining licenses, (Tr. at 401, 810), “and Norma said that they...would need to talk to Jennifer...because she was not there, but they would be interested.” (Tr. at 408-409, 810.) Pat and Norma discussed how Jennifer was “familiar with [Metroplex’s] business because [Pat and Norma] had talked to her about it. [Jennifer] worked with her daddy and worked on [Metroplex] business some.” (Tr. at 810–811.)
58. Approximately one week after Pat’s telephone conversation with Norma regarding the licenses, Ron was in the reception area of Jim’s office where he and Norma also discussed Norma and Jim obtaining radio licenses for the Allen expansion. (Tr. at 402-403.) During that conversation, Norma again indicated that she and Jim would be interested in obtaining the licenses. (Tr. at 403.) At that time, Norma also mentioned that obtaining the licenses would give her and Jim a chance to “repay the debt that they had on the other phone system....The money that they did not pay on the 800 and the mobile equipment that [Metroplex] furnished them and they used for free.” (Tr. at 403.) Norma “indicated...they wanted to clear...that debt...clear [the] air of the radio back bills.” (Tr. at 407.) “Norma does not like to cause any kind of problems, and...if [Norma] can do whatever she can to make things good and not get...in trouble from Jim...she would, she would work that away.” (Tr. at 408.)
59. Pat, Ron, Norma, and Jim had approximately eight to ten conversations (Tr. at 814.), over

the course of approximately four to six months, (Tr. at 812), regarding the Sumpters applying for FCC licenses. (Tr. at 812, 814.) Pat and Ron had more conversations with Norma than with Jim because Jim might be busy, but Norma would “relay [the conversation] to [Jim].” (Tr. at 816.) The conversations either took place in Jim’s office or at Pat and Ron’s home because “lots of time [Norma and Jim] would bring things to [Pat and Ron’s] home from [Jim’s] office because...[Pat and Ron’s] house was between [Norma and Jim’s] house and [Jim’s] office.” (Tr. at 811.)

60. In April, 1996, Ron received a call from Mr. Scott Fennell (hereinafter “Mr. Fennell”) at PCIA informing Ron that O.C.’s 1995 application was never filed with the FCC. (Tr. at 345-346.) The record is silent as to why O.C.’s 1995 application was not successful.
61. In the Spring of 1996, Ron spoke with Mr. Fennell, a frequency coordinator at NABER, (Tr. at 579), (which subsequently became PCIA, hereinafter “PCIA”) and asked Mr. Fennell if Metroplex could apply for multiple channels in Allen, Texas. (Tr. at 585.) Mr. Fennell told Ron he could only apply for one channel at a time, and Mr. Fennell “indicated to [Ron] that it was an PCI[A]/FCC ruling.” (Tr. at 585.) Because Ron needed multiple channels to provide service for the concrete companies, he continued to search for a way to obtain multiple channels in Allen, Texas. (Tr. at 585-586.)
62. After Ron spoke with Mr. Fennell regarding applying for multiple channels in Allen, Texas, Ron also “talked to [Mr.] Black and [Mr.] Black and [Mr.] Fennell and [Ron]...discussed it, and [Mr. Black] confirmed what [Mr.] Fennell had said.” (Tr. at 586.) Mr. Black interpreted Section 90.313 of the FCC’s rules to mean that “if you apply for one frequency or channel, then you have to show that you have constructed and loaded

the number of units on that frequency or channel before you can apply for a second or a third channel, et cetera.” (Tr. at 1643.) Because of the limitations, as interpreted by Mr. Black and Mr. Fennel, imposed by Part 90 of the FCC’s rules, Mr. Black told Ron he could apply for multiple licenses using different entities as the applicants. (Tr. at 586.) Mr. Black told Ron that “[Metroplex] could get channels from different entities within the company or different names licensed and you could put them together and...that circumstances was done throughout the industry.” (Tr. at 586.) Ron asked Mr. Black if he could use other people’s names to “get our channels that way and the answer was yes.” (Tr. at 586.)

63. To confirm the licensing practices expressed by Mr. Black and Mr. Fennell, Ron “pulled a 1995 listing of T-band frequencies and monitored it and...found confirming [data] to say, yes, that was so.” (Tr. at 586-587.) In addition, Mr. Black supplied Ron with raw material from a data bank for Ron to review on four different companies, Action Radio, Piffencriff Communications, Madback Communications, Champion Communications and Randy Angle’s. (Tr. at 587-588, 649-650.) Each had “different frequencies with different names with the same telephone number and address...the same entity but with different names.” (Tr. at 588.) Ron and Mr. Black then discussed what Ron had found and Mr. Black said, “that’s the industry.” (Tr. at 588.) “Because there was a large number of licenses that way,” Ron believed it was legally permissible to obtain the channels he needed on several licenses issued to multiple entities for use by Metroplex at Allen, Texas. (Tr. at 589.) Although Mr. Black does not remember discussing Mr. Fennell’s comments with Ron, Mr. Black admits that the conversation could have taken place, but Mr. Black

talks “to lots of [his] customers on a daily basis, and the coordinators all the time” and he just doesn’t remember. (Tr. at 1691.)

64. Confusion over the interpretation of the FCC’s rules is common in the FCC licensing portion of the radio industry. (Tr. at 1639.) Mr. Black states that knowing whose rules to follow, “the FCC’s rules or the coordinator’s”, is “something that is very confusing for a lot of people in this industry, including consultants...” (Tr. at 1639.) According to Mr. Black, even though Part 90 of the FCC’s rules specifically reads, “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,” Mr. Black states that “coordinators have had various interpretations of what you can and cannot do.” (Tr. at 1675.) When applying for FCC licenses, an applicant can “either go along with the frequency coordinator’s policies or suffer a potential delay of a year or two of getting a grant on their application.” (Tr. at 1678.) PCIA “would probably right now take somewhere in the neighborhood of maybe 30 to 45 days to get [an application] through and to the Commission....From the point it’s at the Commission to grant...that really is a function of what kind of backlogs the Commission has going.” (Tr. at 1678.) In the second half of 1996, the backlog was “maybe around three or four months from the time [an application] went to the Commission to the grant date.” (Tr. at 1679.) Because Ron would suffer a potential delay in obtaining multiple channels in Allen, Texas if he did not use a frequency coordinator, (Tr. at 1678), it was in his best interest to follow Mr. Fennell’s and Mr. Black’s advice

and submit applications through PCIA for channels on several licenses using multiple entities.

65. Based on the information received from Mr. Black and Mr. Fennell, Ron and Mr. Black began the process of searching for specific frequencies to be used by Metroplex. (Tr. at 106.) Mr. Black gave Ron a report with the results of his search for frequencies that were already licensed. (Tr. at 106, 108.) Upon receiving the report, Ron “looked at what was missing, and then made a list and sent to John Black....to verify if [his] calculations were right and current. And once [Mr. Black] got the list he could go on to the [FCC] database and figure out how close it is. [Ron] didn't want to apply for anything that was not exclusive.” (Tr. at 108-109.) Spectrum Licensing “did searches on them to determine if those frequencies were available.” (Tr. at 1629.) It took Ron approximately two weeks to compile a list of eight or nine frequencies in which he was interested, out of the 108 that he found were available. (Tr. at 110-111.) Ron then sent the list of frequencies in which he was interested back to Mr. Black. (Tr. at 115.) Ron and Mr. Black spoke on the phone regarding the frequencies to use and Ron told Mr. Black what frequencies he wanted assigned to each applicant. (Tr. at 1626, 1629.) It took Mr. Black approximately one week to review Ron’s list and create a “final list” of the licenses that Ron needed. (Tr. at 115-116.) It “was a joint effort of [Ron and Mr. Black] looking for these frequencies.” (Tr. at 1631.)
66. In May, 1996, Ms. Lutz returned to work at Metroplex as an office manager after her new company moved their offices to another city that was too far away for Ms. Lutz to drive. (Tr. at 1132-1134, 1285.) When Pat learned that Ms. Lutz was not going to “go with the

other company to the other city,” Pat called Ms. Lutz and asked her to come back to work at Metroplex.” (Tr. at 1134.)

67. When Ms. Lutz came back to work at Metroplex, “[s]he waited on the customers that came through the door, [she] answered the phones, [she] did the invoicing for service work performed, [she] did the billing for the monthly repeater services, [she] handled customer service, [she] handled all of the monthly reports that were made after the monthly statements went out that were sent to the accountant. Any function that had to do with invoicing or billing or receivables, [she] took care of. [She] also did secretarial work for the management staff. [She] did secretarial work for the sales staff. And [she has] done secretarial work for the service manager as well, when he required it.” (Tr. at 1135.) Ms. Lutz also signed checks if neither Diane nor Pat were available. (Tr. at 1136.) Ms. Lutz would “make a phone call to Pat or Diane, whoever was available, to find out whether or not [Ms. Lutz] had permission to write a check. They would say yes, you can write a check, make it out of so and so bank account, and sign Pat’s name to it.” (Tr. at 1136, 1576.) Ms. Lutz would “usually on the stub of the check or sometimes on the photocopy of a check that [she] would take after [she] had written a check, [she] would write on it some explanation as to what the check was for or what it was, to indicate what it was for....” (Tr. at 1136.)
68. From May, 1996 to August, 1996, (Tr. at 1547), Diane took a leave of absence from Metroplex. (Tr. at 634, 1546-1547.) Diane continued to work on payroll from home during that time. (Tr. at 1545-1546.) While Diane was gone, Ms. Lutz worked on the accounts receivable and Pat worked on accounts payable. (Tr. at 1546.)

69. On or around May 25, 1996, (Tr. at 1121), Jennifer and her husband moved out of their one bedroom apartment, (Tr. at 1080), and into apartment number 721 of a building located at 4312 Gus Thomasson Road. (Tr. at 1080, 1082.) Around that time, Pat “called [Jennifer] and asked...for...[her] new address because [Jennifer] had just moved. And so [Jennifer] gave [Pat] her new address.” (Tr. at 1121.) When Pat called Jennifer, Pat “asked her personally” if Jennifer “would...get a license in her name.” (Tr. at 817.) Jennifer said “yes, go ahead.” (Tr. at 817.)
70. On May 28, 1996, Ron was granted a license with call sign WIL990, authorizing the use of five channels in the T-band at Dallas, Texas, (EB Ex. 19, p.359), to be used for the mobile data system for the concrete companies. (Tr. at 101-102, 580-581.)
71. In approximately June of 1996, Ms. Lutz typed a list of the names and addresses for the Sumpters’ license applications to be sent to John Black. (Tr. at 832.) Although Ms. Lutz does not remember if she typed the list, she admits that she “could have typed it.” (Tr. at 1219.) Pat recalls that at the time Ms. Lutz was typing the list, Ms. Lutz asked Pat if Ms. Lutz could have a license applied for in her name as well, (Tr. at 832), however, Ms. Lutz claims she never asked Ron or Pat to apply for a license in her name. (Tr. at 1220.) Pat recalls telling Ms. Lutz that she would “ask [Ron] if he thinks there's a problem.” (Tr. at 832.) Pat did not immediately give Ms. Lutz an answer when she was asked because Ms. Lutz “was recently remarried. She hadn't been married very long, and [Pat] was not comfortable with her second marriage.” (Tr. at 832.) Pat was concerned that if Ms. Lutz were to get divorced from her second husband, Metroplex might lose the use of the license. (Tr. at 833.) When Pat and Ron discussed Ms. Lutz’s request, Ron told Pat he

did not think there would be a problem. (Tr. at 833-834.) Pat asked Ron to ask Ms. Lutz about the license so they could “smooth the feelings there, that it didn’t seem like Pat was forcing [Ron] to do it.” (Tr. at 542.) Ron then asked Ms. Lutz if she would apply for a license in exchange for the use of a two-way radio unit with telephone interconnection in her car. (Tr. at 542, 1162.) Ron told Ms. Lutz that “he needed additional licenses, this was a way for him to obtain the use of licenses, and...would [Ms. Lutz] let him get a license in [her] name.” (Tr. at 1166.)

72. Ms. Lutz understood when she was applying for a license that Metroplex intended to use the station in its business. (Tr. at 493, 1169.) It is Ron’s testimony that when he and Ms. Lutz discussed Ms. Lutz applying for a license, Ron and Ms. Lutz came to a verbal agreement regarding management of the license. The terms of the agreement were, “[t]hat as long as the license [was] there, that she had the rights to do whatever she felt like she could do, should do with the license. She could cancel it, she could sell it, she could do whatever she needed to do. If she sold it, [Ron would] like to have the first request to buy it.” (Tr. at 494-495.) Ms. Lutz, however, claims that she did not know she had a right to have the station turned off until “the hearings.” (Tr. at 1203.) Ms. Lutz was offered “[r]adio equipment in her car,” (Tr. at 493, 1162, 1169), and also equipment for “her husband and kids, the two daughters she has, immediate family members,” (Tr. at 493), as compensation for Metroplex’s use of Ms. Lutz’s license. (Tr. at 493, 1162, 1169.)

73. On June 12, 1996, (Tr. at 1671), after Ron received the “final list” of frequencies from Mr. Black, Ms. Lutz faxed Mr. Black the names and addresses of the license applicants. (Tr. at 115-116, 119, 612, 1671; EB Ex. 66.) Mr. Black received the fax and numbered

the applicants for his own reference. (Tr. at 1628; EB Ex. 66.)

74. Mr. Black then prepared the applications for radio service authorization using the applicant information prepared by, and faxed to him by, Ms. Lutz. (Tr. at 115-116, 119, 612; EB Ex. 66.) The applications prepared by Mr. Black at that time were all for frequencies that were going to be operated from the Allen, Texas site. (Tr. at 118.) The applicants were Jim, Norma, Melissa, Jennifer, Ruth, O.C., Ms. Lutz, and David, who applied for two licenses. (Tr. at 117-118.) Ron never asked Mr. Black to cause any FCC correspondence regarding these licenses to go to anyplace other than each applicant's address as it appeared on the list prepared by Ms. Lutz and as referenced on the face of the applications. (Tr. at 1698.)
75. After Ron received the Sumpters' prepared applications from Mr. Black, Pat contacted Norma to inform her that Pat and Ron had the Sumpters' applications, inquiring as to when she and Ron could bring the applications by for the Sumpters to review and sign. (Tr. at 3414.) On or around June 12, 1996, (Tr. at 414), Pat and Ron went to Jim's accounting firm to bring Norma and Jim the Sumpters' applications and to conduct some Metroplex accounting business with them. (Tr. at 414, 418-419, 819.) Pat and Ron typically send Metroplex's accounting information to their accountant monthly, "between about the 6th or 7th of the month, and the...the 15th of the month." (Tr. at 1467-1468.) Pat and Ron brought a package with them containing four applications and four client copies, one application and one client copy each for Jim, Norma, Jennifer and Melissa. (Tr. at 415-416, 819.) The client copy is "a copy...which the client needs to keep where they know everything that really goes into the FCC, or PCIA." (Tr. at 415.)

76. When Pat and Ron arrived at Jim's accounting firm, Norma was working in the reception area. (Tr. at 417.) Norma knew they were coming, and when they arrived, Pat and Ron opened the package up to show Norma the applications and the client copies, and to show her where to sign. (Tr. at 417.) The applications had the "little sticky notes" that said "sign here..." (Tr. at 819.) Norma then took the applications and the client copies into Jim's office and showed them to Jim while Pat and Ron waited in the reception area. (Tr. at 417, 820.) Pat did not hear the conversation but saw that Norma "was showing [Jim the applications], and [Pat] assume[s] [Norma] was showing him where they needed to sign." (Tr. at 820.) After a few minutes, "Norma waved us in and we went over to the table that's in the other room...and that's when Norma came over there, and spoke with us momentarily, and then Jim came over." (Tr. at 418.) The table was "like a conference table." (Tr. at 820.) The applications and client copies were left on Jim's desk. (Tr. at 419.) Jim "[c]ame over to the desk, and [Pat, Ron, Norma and Jim] discussed whatever the other [business] that [they] had gone in there for...." (Tr. at 820.) Ron does not recall either he or Pat discussing the applications and client copies with Jim at that time. (Tr. at 419.) Ron believes that "[Jim] never brought it up and [Ron and Pat] didn't either." (Tr. at 419.) Pat thinks that Ron may have mentioned to Jim that Pat and Ron had brought the applications over and "Jim said yes...I looked at them." (Tr. at 821.) When Pat, Ron, Norma and Jim finished discussing other Metroplex business, Norma, Pat and Ron went outside and "Norma told [Pat and Ron] that [Norma and Jim] would see [Melissa and Jennifer] Sunday night or Wednesday. [Norma, Jim, Melissa, and Jennifer] would go to church then, all go together....so they would have Jennifer or Melissa at that time sign."

(Tr. at 419, 822.) Pat and Ron showed Norma where to sign the applications and asked her to sign the client copy and make a copy of the client copy for Pat and Ron to keep. (Tr. at 419-420.) Approximately 20-30 minutes after they arrived at Jim's accounting office, Ron and Pat left. (Tr. at 420.)

77. On approximately June 18, 1996, Norma called Pat and told her the applications were signed and ready. (Tr. at 421.) Pat then told Ron that Norma had said the applications were ready and Pat and Ron then went to Jim's office to pick them up on their way home from work. (Tr. at 421-422, 823.) The applications for Jim, Norma, Melissa and Jennifer were in one envelope and the client copies were in a second envelope. (Tr. at 425-426.) Ron picked them up and thumbed through them to verify that they were all signed. (Tr. at 422, 823.) Ron saw that the original applications had been signed, but he did not ask about the origin of the signatures as "there wasn't any reason to ask that question." (Tr. at 427.) According to Ms. Bolsover, the signatures on Norma's, (EB Ex. 41 at 4), Melissa's, (EB Ex. 49 at 3), and Jennifer's, (EB Ex. 54 at 3), applications were probably all written by the same person, because "there was enough evidence to suggest the likelihood," but Ms. Bolsover was unable to identify the signatory. (Tr. at 2300, 2304, 2346.) Ms. Bolsover believes that the signatures on these four applications were not "written by who they purport to be written by," (Tr. at 2364), but she was able to eliminate Ron as the person who signed Jim's application, (EB Ex. 35 at 4), even though she "very rarely" eliminates someone. (Tr. at 2319, 2346.)
78. Following his review of the applications, Ron reviewed the Sumpters' client copies and noticed that the client copies were not signed. (Tr. at 422, 823.) He put the "original

applications into...a package to be mailed, or FedEx.” (Tr. at 422.) Ron then told Norma that he and Pat needed copies of the signed client copies. (Tr. at 422, 824-825.) Norma said that she would be over Saturday because “it was a scheduled time, schedule for them is almost every weekend or every other weekend to come by and see Pat.” (Tr. at 422.) It was “custom practice” for Norma and Pat to go shopping together every Saturday. (Tr. at 1073.)

79. Pat and Ron left the envelope containing the client copies with Norma, and then left Jim’s office with the applications. (Tr. at 426.) While at Jim’s office, Pat and Ron had spoken only to Norma. (Tr. at 425.) Because the FedEx office, or the post office, was only about three blocks from Jim’s office, Pat and Ron physically took the package with the applications there and shipped the package to PCIA. (Tr. at 423, 426.) The “prep and application and coordination fees to have the applications submitted” were all paid for by the Brasher checking account because “[t]hat’s the way Sumpters’ accounting set it up to be.” (Tr. at 125-126.)
80. On June 18, 1996, Ms. Lutz signed her application for a T-band license. (Tr. at 483; EB Ex. 57.) Ms. Lutz’s “actions in signing the license application were voluntary and...[her] employment was not conditioned upon that.” (Tr. at 1168.)
81. In June 1996, relying on the 1992 Power of Attorney and his belief that he was the executor of O.C.’s estate (Tr. at 301, 597.), Ron executed and re-filed O.C.’s application (hereinafter “O.C.’s 1996 application”). (EB Ex. 3.) Because “the license was applied months before [O.C.] died and it was in the...PCIA system...and it should have been issued,” Ron applied for the station in O.C.’s name using the “same frequency and

everything” after O.C. had passed away. (Tr. at 603.) Ron believed the station was part of O.C.’s estate even though it hadn’t been granted before O.C. died because, “it was [O.C.’s] desire and intent, to have a station. And that’s what the first one, the original application, was applied for....That’s what [O.C.] wanted when he was alive. He knew a lot about this radio stuff with us because he lived with us.” (Tr. at 604.)

82. Ron informed the FCC of O.C.’s passing via the Form 800A Verification of Completion of Construction for O.C.’s station by signing the form “Est. of O.C. Brasher”, dated December 9, 1997. (RB/PB Ex.3.)
83. Also on June 18, 1996, Ron sent an application in the name of Ruth Bearden to PCIA for a license on the T-band in Allen, Texas. Ron had Mr. Black prepare the application in Ruth’s name, using Ron’s address of 224 Molina Drive, Sunnyvale, Texas. (Tr. at 183; EB Ex. 9 at 3.) Ruth’s brother, Ed Bearden (hereinafter “Ed”), asked Ron to apply for the license so Ed could use it in conjunction with his sand and gravel hauling business. (Tr. at 196.) Ed was convicted of a felony in the 1930s, and therefore Ron believed that Ed could not apply for a license in his own name. (Tr. at 196-197.) At that time, Ron also did not believe that Ron was eligible to apply for another license in his own name at that location. (Tr. at 197.) Ron signed Ruth’s name to Ruth’s application on June 18, 1996. (Tr. at 171-172, 2304; EB Ex. 9 at 4.)
84. When Ed asked Ron to apply for a license, Ed’s sand and gravel business had approximately eight (8) trucks. (Tr. at 200.) Ruth’s application contained a clerical error requesting ninety (90) mobile units. (Tr. at 200-201; EB Ex. 9 at 8.) Ron noticed the error and changed the client copy of Ruth’s application to request ten mobile units instead.

(Tr. at 200-201; EB Ex. 14 at 9.) Ron believed he had also changed the original copy of Ruth's application to request ten mobile units. (Tr. at 184, 200-201.)

85. On Saturday, June 22, 1996, Norma, Jennifer and Melissa went to Pat and Ron's house for their weekly shopping trip, and Norma also brought the unsigned client copies of the Sumpters' license applications. (Tr. at 426-427, 826.) At that time, "Jennifer was interested because [Ron] was working on a kitchen...table. [Ron] had bought a new kitchen table and [Ron] repaired this one for her to be used in her home, and after she got married, and they were interested in seeing the progress on that table and chairs. So...[Norma, Jennifer, and Melissa] had kind of a dual reason to come by." (Tr. at 422.) Jennifer remembers being at Pat and Ron's house, looking at the progress Ron was making on refinishing the table, but she claims that she was given the table in late 1995 for use in her one bedroom apartment. (Tr. at 1080.) In May of 1996, however, Jennifer and her new husband had just moved into a new apartment, (Tr. at 1080), after approximately seven months of marriage. (Tr. at 1120-1121.) In addition, Ron had recently purchased a new kitchen table, which allowed him to repair the old table and chairs to give to Jennifer and her new husband. (Tr. at 422, 1080.)
86. On June 22, 1996, Norma, Jennifer and Melissa sat down at Pat and Ron's kitchen table and spread out Jim's, Norma's, Jennifer's and Melissa's client copies on the table. (Tr. at 427-428, 826.) Pat and Ron watched Norma sign her application (Tr. at 428-429, 826), and Ron then "took Jim's and Norma's [applications] and when [Ron] was going to [make a photocopy] for [Pat and Ron], [Ron] noticed Norma did not date hers, so [he] whipped back around, and the girls had just about finished up signing theirs, and [he] mentioned to

Norma that she had not put the date on it. So she put the date on it, and...[Ron] think[s] she put the date on the others also.” (Tr. at 428, 826.) Ron saw Norma date the client copies 6/22/96, which was “a different date...than she would have put on the original.” (Tr. at 428-429.) Ron and Pat witnessed Melissa and Jennifer signing the client copies. (Tr. at 431-432, 826.) Norma’s, (EB Ex. 19 at 200), Jennifer’s (EB Ex. 19 at 208.) and Melissa’s, (EB Ex. 19 at 216), signatures on their applications look like their own handwriting. (Tr. at 1888.) Ms. Bolsover believes it is probable that Norma, Jennifer and Melissa each wrote their own signatures on the client copies and that there was nothing to suggest the signatures were traced. (Tr. at 2326-2327, 2335-2336.)

87. At approximately the same time the Sumpters applied for their licenses, David applied for his own licenses, and he “looked at it...as an asset for [his] own estate.” (Tr. at 933.) He also “saw the value towards [Metroplex], looking toward [his] own future of eventually joining it.” (Tr. at 933.) He “had already begun to contemplate that he would go to work full time at DLB Enterprises.” (Tr. at 997.) That was “his goal and Ron’s goal.” (Tr. at 997.) He applied for one license in his name and one license as “D.L.” because he was having “marital problems” with his wife and “wanted to at least have one license that wouldn’t be onto the estate of David and Diane.” (Tr. at 1035.)
88. In July of 1996, Ed informed Ron that the sand and gravel business for which he needed the radio license no longer existed. (Tr. at 202.) Ron attempted to cancel the coordination of the application so that no application would ever be submitted to the FCC. (Tr. at 202.) Ron “called PCIA to get the...frequency advisory number....Then [he] asked that the [application] be cancelled. They said send a letter...and they told [him] exactly who to

send it to. And [he] typed up the letter. [He] faxed it and then mailed the letter too.” (Tr. at 202, 205.) The letter requesting cancellation of Ruth’s application and the accompanying fax cover sheet were addressed to Dawn Daniels (hereinafter “Ms. Daniels”) from Ron and were dated July 30, 1996. (Tr. at 203; EB Ex. 14.) There was no evidence proffered to show that PCIA told Ron that the application had already been forwarded to the FCC.

89. In the Summer of 1996, Jennifer received a “little card” from PCIA. (Tr. at 1054.) According to Jennifer, “[t]he only thing I remember getting in the mail was the little card...and I remember passing that on.” (Tr. at 1054, 1085.) PCIA sends cards to their “dealers and customers when [PCIA] receive[s] applications and then when [PCIA] forward[s] them to the FCC.” (Tr. at 2288.) One card is printed on yellow paper and acknowledges that PCIA has received the license application, lists a control number for the license application, and informs the applicant that PCIA will mail the applicant a notice when the license application is filed with the FCC. (RB/PB Ex. 10.) Another card is printed on green paper and lists the dates PCIA received the application, coordinated the application, and filed the application. (RB/PB Ex. 11.) The card also informs the “radio license applicant” that PCIA has “reviewed, certified, and filed [the] license application with the Federal Communications Commission....” (RB/PB Ex. 11.) The cards generally are “an overnight process...printed out the...next business day after coordination had been completed and then...mailed within the first couple of days.” (Tr. at 2289.) PCIA then files “applications with the FCC within three business days of the date of coordination.” (Tr. at 2289.) Jennifer passed the card to Norma to give to Pat and Ron. (Tr. at 1054,

1085.) Norma “would at least see them monthly when they were doing the accounting.”

(Tr. at 1054, 1085.) Jennifer called Pat when she received the card and said, “I got a card.

Do you want me to mail it to you, back to you, so you’ll know I’ve got it, or can I just

give it to Mom....and [Pat] said well, just give it to your mother when you see her.” (Tr. at

827.) Jennifer gave the card to Norma to give to Ron, because she knew her “mother was

getting mail from the FCC” and because “it was knowledge in [her] family that the FCC

was [Ron’s] business or dealt with [Ron’s] business.” (Tr. at 1056.) Jennifer was not

surprised that “there was an application involving [her] name.” (Tr. at 1117.)

90. Norma also received green and yellow cards from PCIA that she passed on to Ron. (Tr. at 2075, 2123, 2146.) Norma told Pat that she and Jim had received their cards. (Tr. at 827.)

91. On September 9, 1996, Business Radio Licensing sent Jennifer a letter at 4312 Gus Thomasson Road, addressed to “Licensee,” informing Jennifer that their “reviews of the FCC records indicate that you or your company have recently applied for or has been granted an FCC license to operate a communications system.” (Tr., 1087-1088; RB/PB Ex. 4.) In the letter, Business Radio Licensing also offers to sell Jennifer a copy of Part 90 of the FCC Rules and Regulations. (RB/PB Ex. 4.) Because Ron does not have access to Jennifer’s mailbox, the only way he could have received Jennifer’s letter from Business Radio Licensing was if Jennifer had caused it to be forwarded to Ron. (Tr. at 1090.)

92. On September 25, 1996, unbeknownst to Ron, and despite his efforts to stop the coordination of Ruth's application, the FCC issued a license for use of a T-band channel with the call sign WPJR762 in Ruth's name for operation at Allen, Texas. (EB Exh. 10.) Ron never received correspondence from the FCC regarding an application or license for station WPJR762. (Tr. at 208-209.) Ron had "never...seen a card, a PCIA card, never seen a license, and...never seen a cancellation notice." (Tr. at 208.) Ron never constructed the station authorized under call sign WPJR762. (Tr. at 138.)
93. Also on September 25, 1996, the FCC granted a license for a T-band channel under call sign WPJR763 to Ms. Lutz for operation in Allen, Texas. Ms. Lutz received the granted license from the FCC, gave Ron the original license, and kept a copy of the license for herself. (Tr. at 1171.) Ms. Lutz subsequently had two-way radio equipment installed in her vehicle, as per her compensation agreement with Metroplex for the use of her station, although two-way radio equipment was never installed in any her husband's or daughters' cars. (Tr. at 492-493, 1590.)
94. Also on September 25, 1996, the FCC granted a license for a T-band channel under call sign WPJR725 to Jim for operation in Allen, Texas. (Tr. at 1761; EB Ex. 33.)
95. Also on September 25, 1996, the FCC granted a license for a T-band channel under call sign WPJR740 to Jennifer for operation in Allen, Texas. (Tr. at 1052; EB Ex. 55 at 18.)
96. Also on September 25, 1996, the FCC granted a license for a T-band channel under call sign WPJR739 to Norma for operation in Allen, Texas. (EB Ex. 45.) When Norma received her license from the FCC, "she called and told Pat that she had the license, and...Pat told her to put it in with the mail, the stuff that [Pat and Ron were] going to be

picking up, or [have it] sent to [them]...” (Tr. at 443, 828.) Norma told Pat that they received Jim’s, Norma’s and Jennifer’s licenses, and Pat told Norma “to make copies and send [Metroplex] copies because [it] need[ed] to post [the copies], and [Metroplex] would make copies...to keep in [its] files.” (Tr. at 828.) Although Pat does not remember Norma mentioning that she had received Melissa’s license, Melissa’s license was not granted until October 2, 1996, and therefore Melissa would have been the last Sumpter to receive her license. (Tr. at 829; EB Ex. 52 at 14.) Norma subsequently forwarded copies of the Sumpters’ licenses to Pat and Ron. (Tr. at 445, 828.) As with other FCC mailings pertaining to the Sumpters’ FCC licenses, Norma would “always let [Pat] know ahead of time how she wanted it to be handled” and Norma would then forward a copy of the FCC mailings “in [her] monthly or twice a month mailings back and forth for the work itself”, in the pouch from Jim’s accounting firm. (Tr. at 558-559.)

97. On October 2, 1996, the FCC issued a license for a T-band channel under call sign WPJS437 to Melissa for operation at Allen, Texas. (Tr. at 1319-1320; EB Ex. 52 at 14.) At that time, Melissa was living at and attending school approximately a three hour drive away from Jim’s and Norma’s home. (Tr. at 1321-1322.)
98. In their T-band repeater manual, Metroplex maintained documents that indicate “the name of the customer, the address, the account number, and the amount of money that has been collected from their repeater service.” (Tr. at 1270; RB/PB Ex. 7.) When Ms. Lutz was working at Metroplex, any time she “added a customer to the system or changed what they had or whatever, this document was completed and put in a book,” therefore each customer on the T-band system was logged into the manual. (Tr. at 1270-1271.) These

documents kept track of the invoices that were sent to each customer, because when Metroplex “produced an invoice each month to mail to the customer, we logged it on this sheet of paper in the manual so that we would know that we had invoiced the customer and if we ever needed to go back and pull that invoice we would know what invoice number to go look for.” (Tr. at 1272.) These documents also keep track of how many systems and on what systems the customer was loaded, such as Dallas, Texas, Fort Worth, Texas or Allen, Texas. (Tr. at 1273.) These documents also listed the repeater frequency for the station used by each customer. (Tr. at 1274; RB/PB Ex. 7.) Therefore, because the invoice numbers are listed on the first page of this document, one can determine the amount of revenue collected from a customer for use of a specific frequency in a given location. (Tr. at 1274-1275.)

99. In 1997, Ms. Lutz had a two-way radio unit installed in her car. (Tr. at 1162.)
100. On or around February 7, 1997, Norma’s and Melissa’s stations were taken off of the air after Norma called Ms. Lutz and told her she wanted the stations “to be turned off”. (Tr. at 560.) Ms. Lutz then told Ron about Norma’s request and Ron called Norma to confirm her request. (Tr. at 560.) Norma “at that time instructed [Ron] to turn her station, Norma’s station, and Melissa’s station off” without providing an explanation of why she wanted those two stations taken off the air. (Tr. at 560-561.) Ron subsequently shut the stations off and neither station has been turned back on since then. (Tr. at 561.) Melissa denies that she requested her station be turned off. (Tr. at 1344.)
101. On April 1, 1997, David began working full-time for Metroplex. (Tr. at 634, 906.) Because of his position as an officer of the corporation, David had participated in

discussions about Metroplex business prior to going to work there full-time. (Tr. at 906-907.)

102. On November 14, 1997, (Tr. at 906), Net Wave filed a Petition for Order to Show Cause (hereinafter the “Net Wave petition”), (EB Ex. 1), with the FCC requesting the Wireless Telecommunications Bureau issue an Order to Show Cause as to “why the authorizations for the...470-512 MHz band facilities should not be revoked....” Jim testified that “we were a very close family up to that point.” (Tr. at 1793.)
103. The FCC sent a Form 800A to Jim, dated November 17, 1997, requesting verification of completion of construction for the station associated with call sign WPJR725. (EB Ex. 38.)
104. The FCC sent a Form 800A to Melissa, dated November 17, 1997, requesting verification of completion of construction for the station associated with call sign WPJS437. (EB Ex. 52 at 8.) The Form 800A was addressed to Melissa at 4008 Harbinger Drive, even though her permanent address was 4406 Harbinger Drive. (Tr. at 1321, 1325.) Even though it had been sent to the wrong address, Melissa admits to having received the 800A. (Tr. at 1325.) During her Thanksgiving break from school, Melissa reviewed the Form 800A, but she did not fill out or sign the Form 800A. (Tr. at 1326.)
105. The FCC sent a Form 800A to Jennifer, dated November 17, 1997, requesting verification of completion of construction for the station associated with call sign WPJR740. (EB Ex. 55 at 9.) Although Jennifer admits receiving the Form 800A, she claims she threw it out. (Tr. at 1061.) According to Jennifer, “I was angry. I felt like [Ron] was blowing me off. I had already talked to him – I had received the Net Wave [petition] first...and I felt like he

was blowing me off....” (Tr. at 1061.) Despite Jennifer’s claims that she disposed of the 800A, Ron filled in the construction information on the Form 800A and gave it to Jim to have Jennifer sign. (Tr. at 1061-1062.) Jennifer claims that she told her father she was “not going to sign it,” (Tr. at 1062), but Jim recalls “absolutely” instructing Jennifer not to sign it. (Tr. at 1966, 1978.)

106. On November 19, 1997, Pat received the Net Wave petition. (Tr. at 837; EB Ex. 1.)

107. According to Jim, when he received the Net Wave petition (Tr. at 1763, 1832.) at his office, he asked Norma if she had a radio license in the 1996 time frame, and she told him that she did not. (Tr. at 1836.) Jim also claims to have asked Norma if she signed an application for a license, and Norma said no. (Tr. at 1837.) Jim then asked Norma if she signed an application for a radio license for Jim, Melissa or Jennifer, and Norma said she had not signed an application for a radio license on behalf of any of the Sumpters. (Tr. at 1837-1838). After testifying that he had asked Norma if she had signed applications for Jim, Melissa or Jennifer, Jim subsequently attempted to recant his testimony. Jim states, “I don't believe I asked her, on second thought, that I -- I don't believe I asked her that she signed, if she signed anything. I knew she didn't sign it. I asked her if she had knowledge of it.” (Tr. at 1839.)

108. After reviewing the Net Wave petition, Jim “immediately called Ron....” (Tr. at 1763, 1832.) Jim said, “...what is this I got in the mail? It looks legal. It's got my name on it. It's got my children's name on it. It's got my wife's name on it. I don't understand it.” (Tr. at 1763.) In response, Ron told Jim that he would “take care of it” and not to worry about it. (Tr. at 1764.) Jim was “concerned about someone looking at [him] and saying

are you involved in something that's deceptive." (Tr. at 1891.) He was also "absolutely" concerned about the loss of his CPA license and the ability to continue to pursue his livelihood. (Tr. at 1891-1892.)

109. Norma received the Net Wave petition, (EB Ex. 1), at her home at 4406 Harbinger Drive, even though it was addressed to 4008 Harbinger Drive. (Tr. at 1833, 2028.) Upon reviewing the contents of the Net Wave petition, Norma became concerned that she might get sent to jail. (Tr. at 2201.) She and Jim discussed Jim's fear that he would somehow lose his CPA license and therefore, the family income. (Tr. at 2201.)
110. Prior to receiving the Net Wave petition, Jim received mailings from the FCC at his office. (Tr. at 1846.)
111. When Jennifer received the Net Wave petition, she was scared and "fearful that she could perhaps lose [her] CPA license." (Tr. at 1099, 1103, 2201.) Jennifer also "came out and expressed concern of being fined...." (Tr. at 1366.) Jennifer believes that she could have a fine of \$85,000 levied against her. (Tr. at 1101.) She discussed the Net Wave petition with Jim and Norma, and Jim also "expressed concern about losing his CPA license." (Tr. at 696, 1100, 1367.) Although Melissa did not have her RN license at the time the Sumpters received the Net Wave petition, after Melissa did get her license 1998, Jim "brought to [Melissa's] attention" the fact that she is in some danger of losing her RN license because of the allegations contained within the Net Wave petition. (Tr. at 1100-1101, 1367, 2201.) The entire time that Melissa has been an RN, she has been concerned that she would lose her RN license. (Tr. at 969, 1367-1368.) Jennifer is "still concerned that [she] could possibly lose [her] CPA license and be fined." (Tr. at 1102.)

112. Upon reviewing the contents of the Net Wave petition, David determined that Net Wave accused Metroplex of running “an illegal system” and that Metroplex “had a T-band system up and operating under multiple names.” (Tr. at 1009.) Metroplex, however, never made any attempt to conceal its use of multiple names and that information was available to the public. (Tr. at 1011, 1696-1697.)
113. On November 23, 1997, Ron faxed Jim a copy of a draft Opposition to the Net Wave petition and a letter sent to Ron from his attorney, Curt Brown, asking Ron to review the draft and comment on it. (Tr. at 1767, 1860; EB Ex. 37 at 15.) Jim believed Ron was faxing it to him “to relieve [Jim’s] anxiety about this situation, that [Ron] was going to take care of it.” (Tr. at 1767.) Jim claims that he “read it, but not line by line.” (Tr. at 1850.) Jim also claims that although he did not understand what he was reading, Jim did not ask any questions about the draft Opposition. (Tr. at 1851.) Jim did not care how Ron took care of the allegations raised in the Net Wave petition, as long as Ron took care of addressing those allegations, and “if this opposition would take care of it, [Jim] was just as happy to have Ron do it and file it.” (Tr. at 1854.) Jim never told Ron he did not want Ron to address those allegations on his behalf or that Jim would respond on his own behalf, Jim just “wanted it done.” (Tr. at 1854-1855.) Norma also reviewed the fax from Ron and she “had every opportunity to do whatever [she] wanted to with this document.” (Tr. at 2187.)
114. On behalf of the defendants and all associated family member licensees, an Opposition to the Net Wave petition was filed with the Commission on November 25, 1997. (EB Ex. 2.) Within this voluntary response, respondents admitted that each of the stations were owned

by members of the family and were used together to form a system to serve the greater Dallas market area. (EB Ex. 2.) The Opposition denied that Net Wave had demonstrated any violation of Commission rules in the use of multiple family members to accomplish its filing efforts. (EB Ex. 2.)

115. On or around November 27, 1997, after she got home from school for Thanksgiving break, Melissa discussed the Net Wave petition with Jim. (Tr. at 1354-1355.) When Net Wave's attorney mailed the Net Wave petition to Melissa, it was sent to 4008 Harbinger Drive, rather than 4406 Harbinger Drive. (Tr. at 1377.) Again, despite the fact that it was sent to the wrong address, Melissa still received the petition. (Tr. at 1321, 1377; EB Ex. 1.) She remembers "talking about it listing [the Sumpters] as parties and making [them] sound like crooks." (Tr. at 1355.) Melissa did not completely understand the Net Wave petition when she read it, so Jim "might have explained parts to [her] that [she] might have asked him...." (Tr. at 1355.) When she first saw the Net Wave petition, Melissa claims to have lacked any recollection of ever having signed an application for an FCC license back in the early 1990s. (Tr. at 1356.) Melissa "didn't make a connection with what [she] was looking at as to what [she] had signed for [her] Aunt Patsy in the early '90s....[She] didn't make the connection with that when [she] first saw the [Net Wave petition]" (Tr. at 1358.)

116. On November 28, 1997, Mr. Lewis was issued an end user license under the call sign WPIR456 for operation on the 900 MHz system. (Tr. at 538-539; EB Ex. 65.) This license was never utilized by Metroplex. (Tr. at 5332.) The license did not fulfill any necessity Metroplex had on the 900 MHz system and it was unrelated to the T-band