

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

In the Matter of)
)
Ronald Brasher)
Licensee of Private Land Mobile Stations)
WPLQ202, KCG967, WPLD495, WPKH771,)
WPKI739, WPKI733, WPKI707, WIL990,)
WPLQ475, WPLY658, WPKY903, WPKY901,)
WPLZ533, WPKI762, and WPDU262)
Dallas/Fort Worth, Texas)
)
Et al)
_____)

EB DOCKET NO. 00-156

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Administrative Law Judge
Arthur I. Steinberg

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

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SUMMARY

The Bureau submits that its Proposed Findings and Conclusions of Law are an accurate account of the record evidence, whereas the Proposed Findings of Fact and Conclusions of Law filed on behalf of Ronald and Patricia Brasher and the Proposed Finding of Fact and Conclusions of Law filed on behalf of David and Diane Brasher are replete with inaccuracies and misinterpretations and are, thus, unreliable.

The Brashers' Proposed Findings of Fact rely heavily on the self-serving testimony of the Brashers. The record evidence demonstrates that the Brashers are not credible. Their reports to the Commission regarding the events at issue have changed with each telling. In contrast, the Bureau's Proposed Findings accurately depicts the record evidence. In particular, the Brashers would have the Commission disregard the testimony of the four Sumpters who have related a consistent story which is corroborated by the record evidence.

The Brashers' legal arguments are also flawed. With respect to the misrepresentation issue, the Brashers assert that there were no deliberate or intentional misrepresentations. The record evidence shows that the Brashers embarked on a grand scheme of deception involving fabricated reports to the Commission that dead relatives and relatives who did not know they had licenses were actively financing and supervising the operation of "their stations."

With respect to the abuse of process issue, the Brashers assert that the preponderance of evidence is that they did not commit forgery. The record however demonstrates that the Brashers signed and applied for licenses in the names of dead relatives, and submitted forged applications in the names of relatives who were not aware that they were becoming licensees.

Finally with respect to the real party-in-interest/transfer of control issues, the Brashers assert that the fact that DLB was the real party-in-interest behind a variety of applications was a harmless non-disclosure and that control remained in the “family.” Neither of these legal arguments is meritorious.

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Introduction

1. The Enforcement Bureau hereby replies to both the Proposed Findings of Fact and Conclusions of Law submitted by Ronald Brasher, Patricia Brasher, and DLB Enterprises, Inc. as well as those submitted by David and Diane Brasher.

2. The Bureau submits that its Proposed Findings and Conclusions of Law (“EB PF&C”) are an accurate account of the record evidence, whereas the Proposed Findings of Fact and Conclusions of Law filed on behalf of Ronald and Patricia Brasher (“RB/PB PF&C”) and the Proposed Finding of Fact and Conclusions of Law filed on behalf of David and Diane Brasher (“DB/DB PF&C” or, as to each, “proposed findings”) are both

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replete with inaccuracies, misstatements, misinterpretations and distortions and are, thus, unreliable. The Bureau will address examples of those inaccuracies. However, the Bureau's failure to respond to a particular finding or argument is not a concession that the finding is accurate or that the conclusion is meritorious.

Brashers' Findings of Fact

3. One of the most serious failings with their proposed findings is that the Brashers (Ronald, Patricia, David and Diane Brasher), relying almost exclusively on their versions of the events, would have the Commission resolve all disputes in their favor despite substantial contrary evidence and testimony. The obvious problem with this is that the record repeatedly demonstrates that they are not credible. As the Bureau discussed in its PF&C, Ronald and Patricia have reported and testified to multiple versions of the events at issue, and the latest version of events discussed in the RB/PB PF&C is directly contradicted by record evidence. Likewise, despite David's false assertions of honesty and cooperation in the DB/DB PF&C, he also has repeatedly contradicted himself and the credible record evidence.

Ronald's and Patricia's Proposed Findings of Fact

4. For example, Ronald's and Patricia's story regarding the Ruth Bearden 1994 and 1996 applications has evolved with each telling. First, they informed the Commission that Ruth Bearden was supervising the operation of her station WPJR762. (EB Ex. 2)¹ (See EB PF&C ¶ 52) Then, after the Commission discovered that Ruth died in 1991,

¹ The Brashers state that they were not required to respond to the Netwave Petition, erroneously implying that the optional nature of the response excuses the falsities contained therein. (RB/PB PF&C ¶ 183)

Ronald told the Commission that they mistakenly applied for the license in Ruth Bearden's name when it should have been in a similar corporate name, and Ronald tried to cancel the license after he received the license. (EB Ex. 21, p. 25; See EB PF&C ¶ 59) At the same time, Patricia specifically reported she had nothing to do with this application. (EB Ex. 21, pp. 4-8) Ronald testified to yet a third story at the hearing: that they filed the application in Ronald's mother's maiden name to avoid the FCC character qualification requirement for an uncle who had a prior felony conviction and could not get a license in his own name. (Tr. 196-97; See RB/PB PF&C ¶¶ 83-4) Ronald also testified that he thought the application was withdrawn and he never received correspondence, including the license, regarding station WPJR762. (Tr. 177, 181, 209; See EB PF&C ¶ 60; RB/PB PF&C ¶ 88)² At hearing, Patricia admitted that she prepared the checks to pay the fees for Ruth's applications and she acquiesced in their submission. (Tr. 785-86, 875) For the first time, in their proposed findings, counsel for Ronald and Patricia create a fourth explanation. They now claim that Ronald's signing his deceased mother's maiden name to an application was not a forgery because Ronald was acting as the executor of Ruth's estate. (See RB/PB PF&C, ¶ 166)

5. Ronald and Patricia's Proposed Findings offer no explanation for the evolution of their reports.³ The proposed findings would simply have the Commission find that their

² The record evidence demonstrates that soon after the FCC canceled the license, Ronald faxed the license and the FCC cancellation letter to John Black and applied to operate 90 mobiles on the same frequency at the same location in the name of DLB. (EB Ex. 10, pp. 1-2; Tr. 1666, 1668-69; See EB PF&C ¶ 28)

³ In the RB/PB PF&C ¶ 185, the proposed findings suggest that one response related to a different Ruth Bearden station. This suggestion is not an adequate substitution for an explanation.

latest version is the truth, and find that their previous misstatements were “inadvertent” and that they never meant to mislead the Commission. (See RB/PB PF&C ¶¶ 180 *et seq.*)

6. With respect to an assignment application for station KCG967, (EB Ex. 13) from Ruth Bearden to Ronald Brasher in 1994, three years after Ruth’s death, Ronald’s and Patricia’s proposed findings assert that either Ronald never signed the application, or in the alternative, he signed reasonably believing he could sign Ruth’s name to applications as executor of Ruth Bearden’s estate due to a revoked Power of Attorney executed by his father. (See RB/PB PF&C ¶ 43)⁴

7. Ronald and Patricia admit that they submitted forged applications on behalf of the Sumpters but argue that they had no reason to know that the applications were forged. (See RBPB PF&C ¶¶ 77, 170) That argument alone proves that they did not talk to the Sumpters about the applications. Considered in conjunction with Gale Bolsover’s testimony that all of the Sumpters’ 1996 applications signatures are forgeries;⁵ the

⁴ For the first time in these proposed conclusions, Ronald asserts he had authority to sign applications on Ruth Bearden’s behalf as executor of her estate. (RB/PB PF&C, ¶ 166) Aside from the illegalities of such actions, there is no evidence in the record that he or O.C. was executor of Ruth’s estate. Additionally, he admitted he signed Ruth’s name to her application to deceive the Commission regarding the real-party-in-interest to the application. (Tr. 196-97; RB/PB PF&C ¶ 83) It is ludicrous that Ronald and Patricia claim that Ronald could sign an application five years after Ruth Brasher, nee Bearden, died; claim do so to purportedly avoid the Commission’s character qualification review of his uncle; certify her eligibility to hold such license; and then claim that he was acting in good faith in his capacity as executor of her estate and that he has been honest and forthcoming with the Commission.

⁵ Gale Bolsover, the Bureau’s handwriting expert, testified that the signatures on the 1996 applications in the Sumpters’ names are not the Sumpters’ genuine signatures. The Brashers do not dispute her conclusion. (Tr. 2363-64; See RB/PB PF&C ¶ 77)

Sumpters' testimony that none of them talked about, or consented to, the signing of their applications in 1996;⁶ significant evidence that the Brashers, particularly Ronald and Patricia, repeatedly lied to the Commission regarding other "facts"; and recognition that only the Brashers and DLB Enterprises, Inc. ("DLB") benefited from these applications, it becomes apparent that the Brashers are lying about the Sumpters' involvement in and consent to the submission of 1996 applications in their names. Contrary to Ronald's and Patricia's assertions (See RB/PB PF&C ¶ 170), the Sumpters had no motive to forge their own signatures⁷ in order to submit applications or obtain licenses that were of no benefit to them. It is clear that the applications were submitted by Ronald on behalf of DLB, without the knowledge or consent of the Sumpters, as part of a package of applications sent to the frequency coordinator to facilitate DLB's expansion.

8. The Brashers provided "client copies" of the Sumpters' 1996 applications to the Bureau, long after Ronald and Patricia knew that the Sumpters denied signing "their" 1996 applications,⁸ in an effort to bolster Ronald's and Patricia's stories about discussing and obtaining the signed 1996 applications from Norma Sumpter. (See RB/PB PF&C ¶ 86) Despite their denials, (See RB/PB PF&C ¶ 172) their motive for manufacturing the "client copies" is obvious: without the manufactured "client copies" the Brashers had

⁶ See EB PF&C ¶ 61, 66; Tr. 1049-51, 1076-78, 1120-22; 1318-21; 1942-43; 2011-12, 2029, 2088 - 89, 2095, 2102; EB Ex. 34; EB Ex. 37; EB Ex. 39; EB Ex. 45; EB Ex. 47; EB Ex. 48; EB Ex. 52; EB Ex. 53; EB Ex. 55; EB Ex. 56.

⁷ Nor, as implied by the Brashers, would Norma have a motive to forge the signatures of her family members to their applications and then have someone else sign her name to her application.

⁸ The Brashers learned of the Sumpters' denials soon after the Net Wave Petition was filed on November 17, 1997. The "client copies" were not submitted to the Bureau

no evidence to support their contention that the Sumpters signed “their” 1996 applications, nor could they effectively argue that the Sumpters ratified those applications. When they submitted the “client copies,” Ronald and Patricia did not know that expert handwriting analysis would show that none of the Sumpters signed the 1996 applications. Unfortunately for them, Ronald and Patricia chose to date the “client copies” for a Saturday when Norma was out of town and could prove it.⁹

9. Gale Bolsover testified, contrary to the assertions of Ronald and Patricia, that the quality of the “client copies” was so poor that she was unable to determine whether the signatures of the Sumpter women were cut and pasted onto the documents.¹⁰ (Tr. 2335-36, 2348-49, 2360-63; See EB PF&C ¶ 62) Ms. Bolsover was able to determine, however, that at least two of the dates on the client copies are identical, proving that at least one of the dates was copied onto the document. (Tr. 2343; See EB PF&C ¶ 62)

until April 5, 1999. (EB Ex. 19)

⁹ Ronald and Patricia claim that the “client copies” were signed at the Brashers’ house on Saturday, June 22, 1996. (Tr. 426-27; 825; See EB PF&C ¶ 62) Norma Sumpter, Jennifer Hill, and Melissa Sumpter each testified credibly that such a signing party never occurred. (Tr. 1068-71, 1073-74; 1333-38; 2029-31, 2089; EB Ex. 19, pp. 198-204, 206-08, 214-16) Norma and Jim further produced evidence to support their testimony that Norma was 300 miles away taking care of Jim’s elderly aunt that weekend. (See EB PF&C ¶ 62)

¹⁰ Also contrary to Ronald’s and Patricia’s assertions, Ms. Bolsover does not eliminate Ronald as the person who forged the Sumpters’ names to “their” 1996 applications or “client copies.” She was unable to determine who signed the 1996 applications but found that Ronald did write the date on Jim’s Form 600. (EB Ex. 75) Again, that alone contradicts Ronald’s and Patricia’s testimony that the signed applications were in an envelope when they picked them up and that, after checking only that they were signed, they went directly to the post office or FedEx office and forwarded them. (Tr. 425-26) Ronald’s and Patricia’s testimony was that they did nothing to the signed forms but forward them as they received them.

This indicates that the other dates and signatures may have been cut, pasted and copied and, standing alone, discredits the accuracy of Ronald's and Patricia's detailed description of the signing party where they allege the applications were separately signed and dated. (See RB/PB PF&C ¶ 78, 85-86)

10. In their proposed findings Ronald and Patricia refer to Jim Sumpter as the licensee of an end-user license. (See RB/PB PF&C ¶¶ 13, 25, 176) There is no evidence in the record that Jim Sumpter ever applied for, held or had knowledge of such a license. To the contrary, Jim Sumpter testified that he refused to submit a license application the one time that he was asked to do so, and that as soon as he learned about the 1996 application/license in his name, he demanded that it be taken out of his name. (Tr. 1758, 1774-75; See EB PF&C ¶ 39)

11. Ronald and Patricia also make repeated reference to the "debt" to Metroplex that they contend the Sumpters incurred as a result of that car radio-phone.¹¹ Carolyn Lutz and Diane Brasher testified that Metroplex did not send any bills to the Sumpters regarding service for the radio-phone in Jennifer's car. (Tr. 1587-88) Similarly, Jim and Norma testified that Patricia offered the use of the radio-phone as a family favor and that they did not receive any bills from Metroplex and were not otherwise informed by Metroplex of any charges for the use of that radio-phone. (Tr. 1791-94; 2022-23) Consequently, the Sumpters did not owe any debt to Metroplex.

¹¹ One such reference, RB/PB PF&C ¶ 139, incorrectly cites Tr. 456 for Norma's testimony that consideration was given in the form of the forgiveness of debts. The witness testifying at that point in the transcript was Ronald.

12. Ronald's and Patricia's proposed findings also argue that the Sumpters were able to determine the revenue of their stations from the documents sent to Jim's office each month. (RB/PB PF&C ¶¶ 138) Aside from the fact that the Sumpters did not know that they had the 1996 stations, Ronald's and Patricia's premise that such documentation fulfills DLB's obligations to supply financial information to the Sumpters in their role as licensees is ludicrous. The Sumpters have denied being able to determine the revenue of any specific station. (Tr. 161, 451; 1910; 1788; 2111-12; See EB PF&C ¶ 37) Diane, the DLB officer who now is charge of its day-to-day financial operations and who has access to ALL of its documents, admits that the revenue was not broken down by station and that she could not, even now, break down the revenue by station. (Tr. 1577-79; 1514; See EB PF&C ¶ 37)

13. Finally, with respect to the Lutz license, Ronald's and Patricia's proposed findings frequently state that Lutz typed the list of names that Ronald faxed to John Black as applicants for the 1996 licenses. (RB/PB PF&C ¶¶ 71, 74) When first questioned about the list (EB 19, p. 229), Lutz did not remember the document and stated that she might have typed it. (RB/PB PF&C ¶ 71) After reviewing the document, however, she saw that it included mistakes that she would never make¹² and concluded that she did not type the document. (Tr. 1218-21)

¹² Lutz testified that she would not have typed the list with some names in all lower case letters and some in all capital letters and that she would not have listed an incorrect address for David. If she'd been asked to type up this list, she testified that she would have questioned why it contained an incorrect address for David. (Tr. 1221-22)

David's and Diane's Proposed Findings of Fact

14. David and Diane basically claim not to have seen, heard or done anything in contravention of the Commission's rules and assert they have been totally honest and forthcoming with the Commission.¹³ Their proposed findings falsely argue that David had "little or no" input into DLB/Metroplex before he actually started working there (See DB/DB PF&C ¶ 4), and that Diane was hardly involved at all in the business during the summer of 1996 (See DB/DB PF&C ¶ 10).¹⁴ However, Ronald, Patricia and David testified at trial that the major decisions of the company have always been made jointly by Ronald, Patricia, David and Diane. (See EB PF&C ¶ 7) Pat also testified that Diane continued to work at home during the summer of 1996 and that she regularly consulted with Diane regarding DLB decisions during that time period. (Tr. 896)

15. David's answers to the Bureau's Requests for Admissions are, apparently, so confusing that he can't even remember the basis for them. He first claims to have answered using only with the knowledge he had in 1995 through 1997, then said he used only the knowledge he had in 1995 through 1996 and finally stated that he answered using only knowledge he had in 1996 through 1999 (DB/DB PF&C ¶ 9).¹⁵ He failed to

¹³ DB/DB PF&C claims that David and Diane were fully cooperative, informative, forthright and that the record is void of any evidence that either made a false statement, much less showed an intent to deceive. (DB/DB PF&C ¶ 14)

¹⁴ Contrary to David's and Diane's assertions, (DB/DB PF&C ¶ 4) Lutz did not know the range of Diane's duties, other than payroll, during the summer of 1996. (Tr. 1302)

¹⁵ David denies, however, that he concealed information, evaded questions or failed to be anything but fully informative. He asserts that he gave complete, truthful, rational and understandable explanation for his responses to the Requests for Admissions and that he had had no intent to deceive anyone, much less the FCC. (See DB/DB PF&C

notify the Commission anywhere in his answers that he was restricting his answers in any way because the “time frame restrictions” were simply an attempt, after the fact, to justify his answers when he was questioned about them by Bureau counsel. David made up the testimony about each “restriction” as he went along in order to justify a specific false answer. Consequently, the time frame of his restriction varied depending on the answer that he was attempting to justify.

Brasher Proposed Conclusions of Law

16. Ronald’s and Patricia’s Proposed Conclusions of law are also not reliable.¹⁶ The review of the facts contained therein is frequently inaccurate and ignores important evidence; the legal analysis is not rigorous and ignores Commission precedent; and the inferences drawn are not supported.

¶ 14)

¹⁶ The Bureau notes that the Brasher PF&C misstates the burden of proof. The Bureau agrees that it has the burden of proof with regard to the revocation part of this proceeding. The Supreme Court held in *Steadman v. SEC*, 450 U.S. 91 (1981) that the preponderance of evidence standard applies to cases under Section 556(d) of the Administrative Procedure Act. The Commission’s holding in *Silver Star Communications – Albany, Inc.*, 6 FCC Rcd 6905, 6907 n.3 (1991) that “the preponderance of the evidence standard - not the clear and convincing standard - generally applies to Commission revocation proceedings.” The Commission affirmed the Review Board’s decision that the reasoning in *Sea Island Broadcasting Corp. v. FCC*, 627 F.2d 240 (D.C. Cir. 1980) was no longer valid after the Supreme Court’s decision in *Steadman v. SEC*, 450 U.S. 91 (1981). *Silver Star Communications-Albany, Inc.*, 3 FCC Rcd. 6342, 6348-49 (1988). To the extent that the Brashers rely on *Sea Island*, RB/PB PF&C ¶ 161, the Bureau submits that such reliance is misplaced. The RB/PB PF&C also fails to recognize that with regard to matters relating to the designated applications, DLB has the burden of proof.

Misrepresentation Issue

17. The Brashers would have the Commission find that they were ignorant of the Commission's rules and that their flagrant misrepresentations and deceptions were not intentional. For example, Ronald and Patricia claim that the actions they took with respect to O.C. Brasher's posthumous application and license were taken in good faith to preserve an asset of his estate. (See RB/PB PF&C ¶ 169) Yet, at every turn until the Commission found out from the Sumpters that O.C. and Ruth were dead, Ronald and Patricia reported that they were managing O.C.'s station under O.C. Brasher's supervision. (See EB PF&C ¶¶ 24-25, 55-56) For example, they gloss over the fact that their submission of the management agreement with EB Ex. 19 did not mention the fact that O.C. was dead, despite the fact that the Commission asked pointed questions regarding O.C. Brasher's involvement in the management of his station.

18. The overarching theme of the Brashers' legal assertions with respect to the issue of misrepresentation is that they did not intend to deceive the Commission. (RB/PB CF&C ¶ 180 *et seq.*) Even a cursory review of the Opposition filed by the Brashers in response to the Netwave Petition, and their response to a letter of inquiry from the Commission, EB Ex. 19, demonstrates that the Brashers attempted a grand charade on the Commission. It is clear from these responses that they wanted the Commission believe that O.C. Brasher, Ruth Bearden, and the Sumpters reviewed and signed their respective applications. They also reported in elaborate detail that O.C. Brasher, the Sumpters, Carolyn Lutz and Diane Brasher were actively involved in supervising the management of their respective stations, and were well compensated for assigning these licenses to

DLB. Nowhere in the response do they admit that O.C. and Ruth were long since dead when their applications were filed. Nowhere do they admit that Diane is not D.L. Brasher and was not a licensee. Nowhere do they admit that there was never any compensation to Carolyn Lutz or the Sumpters. The detailed description of the large numbers of radios and the valuable airtime provided as compensation is fabricated, as is the detailed description of the Sumpters commitment to actively participate in the operation and marketing of their stations. The detailed descriptions of agreements made by the Sumpters and Ms. Lutz to risk monies and incur loans to construct the stations are not “inadvertent” errors as contented by the Brashers, but blatant fabrications submitted in an effort to mislead the Commission. The efforts of Ronald’s and Patricia’s counsel to testify in RB/PB PF&C that they were inadvertently to blame for some of the lies contained in documents submitted to the Commission is inappropriate, ill-considered, without merit, not a part of the record evidence or supported by the record evidence and should not be given consideration by the Presiding Judge.¹⁷ Each person is responsible for the contents of his/her submissions to the Commission. To hold otherwise would seriously undermine all of the Commission’s processes.

Abuse of Process Issue

19. Ronald and Patricia Brashers’ assertions with respect to the abuse of process issue are similarly unreliable. As discussed above, with respect to their latest story regarding how they came to sign the names of Ronald’s deceased parents to applications, they now assert that Ronald believed he was acting as executor of estates. (RB/PB PF&C ¶ 43,

¹⁷ For example, at RB/PB PF&C ¶ 146; RB/PB PF&C ¶ 185.

166, 168) In the latest version of events, he believed he was executor because of a Power of Attorney that his father executed in 1992. Ronald did not reveal this Power of Attorney when questioned in his deposition about the authority for his actions. Ronald and Patricia assert that they did not report this basis for their belief to their attorneys until two weeks prior to the hearing. (RB/PB PF&C ¶ 186) It is hard to swallow that they had a good faith belief that they were acting as executors of estates based on a revoked power of attorney executed in 1992, and they did not even tell their lawyers about it until just before the hearing.

20. Similarly, Ronald's and Patricia's theory that the Sumpters had someone forge their signatures on the Sumpter 1996 applications is incredible. (See RB/PB PF&C ¶ 170) The Sumpters each testified that they did not know about or desire the licenses issued in their names. (EB PF&C ¶ 32) The Brashers try to undermine the Sumpters' testimony by asserting that the Sumpters were worried and scared about the Netwave Petition. (See RB/PB PF&C ¶¶ 211, 226) The Sumpters were understandably upset about the Netwave Petition: they found themselves involved in a protracted legal proceeding with possible adverse consequences as a result of FCC license applications they never signed. (See EB PF&C ¶¶ 32, 61-63) The fact is that the Sumpter applications that Ronald and Patricia submitted do not have genuine signatures. The evidence indicates strongly that the Sumpters' version of events is more credible than the Brashers' version.

21. The Brashers also argue that the Bureau has not shown a motive to commit forgery because it is likely at least some of the Sumpters would have signed the applications if asked to do so. (See RB/PB PF&C ¶ 173) The Brashers' motive to commit forgery was pecuniary. DLB wanted to get the channels it needed to serve a large customer as quickly as it could. When Ronald learned he could obtain channels in other names, he sent John Black a list of names. He then had someone sign the applications so he could file them as quickly as possible.

Unauthorized Transfer of Control/ Real-Party-in-Interest Issue

22. The Brashers advocate a novel legal theory with respect to the unauthorized transfer of control/real-party-in-interest issue. Their theory is that they were a close family and as long as they were getting along, control remained in the family. They then apply the Commission's test for maintaining control to the "family" rather than to the licensee. (RB/PB ¶ 205 *et seq.*) This is absurd. The Commission licenses individuals or formal entities to be licensees, applies its eligibility rules to licensees, and holds individual licensees responsible for the operation of stations. The Sumpter and Lutz licenses were not issued to a family but to individuals.

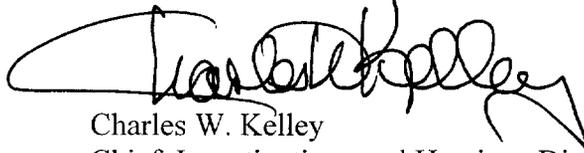
23. With respect to the real-party-in-interest question, the Brashers attempt to persuade the Commission that DLB was in fact eligible for the licenses in question, and therefore there was no real-party-in-interest violation. (RB/PB ¶¶ 197-99) This argument has three serious failings. The first is that the Commission has previously rejected this argument, and the United States Supreme Court upheld its decision. *FCC v. WOKO*, 329

U.S. 223, 227 (1946). The second is that the Commission had a specific rule requiring DLB to disclose the real-party-in-interest to each application. 47 C.F.R. § 90.123 (1996). The Brashers' proposed conclusions of law fail to address either problem. Finally, the evidence shows that the Brashers' stations were not fully loaded at the time the 1996 applications were submitted as required by Commission rule § 90.313. (Tr. 101-03) Contrary to Ronald's and Patricia's arguments in their proposed findings, they did not yet have the additional 700 mobiles to service. The "big customer" was, at that time, only a potential customer who was still developing a mobile data system that it hoped to use in the future. (Tr. 101-103)

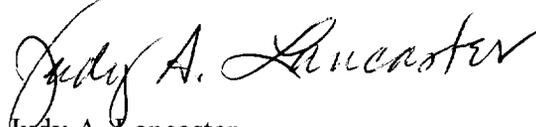
Conclusion

As discussed above, the Enforcement Bureau believes that the Proposed Findings of Fact and Conclusions of Law submitted by Ronald and Patricia Brasher, and by David and Diane Brasher are unreliable. The Bureau submits that its Proposed Findings and Conclusions provide a reliable treatment of the relevant evidence.

Respectfully submitted,



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November 7, 2001

CERTIFICATE OF SERVICE

I, Karen Richardson, secretary of the Investigations and Hearings Division, Enforcement Bureau, certify that I have, on this 7th day of November, 2001, served, by the method indicated, copies of the foregoing "Enforcement Bureau's Consolidated Reply to Proposed Findings of Fact and Conclusions of Law" to:

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