had been an order appointing him executor. The Bureau's citations merely reflect that Ron assumed he was appointed guardian and that he did not remember his attorney at the time telling him that he was appointed guardian. (EB Ex. 69 pp. 231-240.) Regardless of the procedural or administrative deficiencies in Ron's service as the *de facto* executor of O.C.'s estate, there is no evidence which suggests that Ron did not believe that he was acting as executor and was not empowered or duty bound to so act.

112. *By the time of the hearing, Ronald admitted that there was no court order appointing him executor of O.C.'s estate. (Tr. 333)* [Bureau's P.F.F. para. 56.] The Bureau attempts to spin Ron's testimony into an admission that is not supported by the record. At hearing, Ron was asked whether there had been a probate court order appointing him executor of O.C.'s will. (Tr. at 333.) Ron's response was, "[n]ot that I,....I do not know." (Tr. at 333.) This is far from being the admission the Bureau alleges. What more closely resembles the record is Ron's statement that he acted as executor, but he lacked evidence or knowledge as to whether his actions were in accord with a court order. The Bureau's statement infers a contradiction which simply never existed.

113. *Moreover, Ronald admitted that O.C.'s Will was never probated and that O.C.'s property has not been distributed among his heirs. (Tr. 333-34)* [Bureau's P.F.F. para. 56.] The Bureau fails to employ the entire record as to why O.C.'s property has yet to be distributed. The record indicates that the brothers, Ron and Oscar, decided not to distribute the assets "until everything gets settled in [Oscar's] mind and [Ron's] mind." (Tr. at 334.) Accordingly, this is not an admission, but a simple statement regarding the

status of the estate. It is also not a proposed finding of fact, but rather a reflection of the testimony.

114. *David's supposed understanding is that DLB can legally operate a station licensed to O.C. even though O.C. is deceased. (Tr. 952).* [Bureau's P.F.F. footnote 12.] As was determined at the hearing, David's testimony is that of a layperson. (Tr. at 952-953.) Therefore, David is unable to draw legal conclusions. (Tr. at 952-953.) The Bureau is asserting that he was able to do so here. Given David's status as a layperson, the Bureau is only entitled to address David's state of mind. (Tr. at 952-953.) And as David's testimony shows, it was his understanding at that time that it was permissible to operate a license in the name of O.C. and O.C.'s estate. (Tr. at 952.) Furthermore, the Bureau itself is testifying and going beyond the record by stating that it was David's "supposed" understanding. There is no evidence to the contrary supplied by the Bureau to suggest that this was not David's understanding.

115. *On October 14, 1999, responses were submitted on behalf of Patricia, Ronald, David, Diane Brasher (David's wife) and Carolyn Lutz.* [Bureau's P.F.F. para. 58.] The Bureau fails to offer support for this sentence. Again, the Bureau is improperly testifying.

116. *As noted above, contrary to both the October 1999 response and his deposition testimony, Ronald ultimately acknowledged at the hearing that he never had been appointed an executor of O.C.'s estate. (Tr. 333-34)* [Bureau's P.F.F. para. 60.] As has previously been noted, Ron did <u>not</u> acknowledge at the hearing "that he never had been appointed an executor of O.C.'s estate." (*See, supra,* paragraphs 111-113.) Ron testified that he did not know if there had been a probate court order appointing him executor.

(Tr. at 333.) Furthermore, the Bureau has failed to show how the deposition testimony is contrary to Ron's testimony at trial. The Bureau's citations to the deposition, (EB Ex. 69 pp. 231-240), only reveal that Ron assumed he was appointed guardian and that he did not remember his attorney telling him otherwise. The Bureau's repeated and apparently desperate attempt to find a contradiction within Ron's statements at deposition and trial are fruitless and go nowhere.

117. *Likewise, with respect to the application for Ruth Bearden, Ronald changed his story at the hearing. There, he claimed that the 1996 application in the name of Ruth Bearden was submitted on behalf of Ronald's uncle, Ed Bearden, who needed a license for his sand and gravel hauling company.* [Bureau's P.F.F. para. 60.] The Bureau is inaccurate in its recitation of the facts. Ron did not alter his story regarding the purpose of the Ruth Bearden T-Band license. At his deposition, and at the hearing, Ron related the same facts as to why he applied for the license in Ruth's name. (*Compare* Tr. at 195-199 with Ron Brasher Dep. Tr. 77.) Any inconsistencies that may have occurred are a result of inarticulate questioning and the fact that there were two licenses in Ruth's name, which resulted in mis-communications between Defendants and counsel. However, the most telling evidence is Ron's deposition and his testimony at trial, which are entirely consistent.

118. *Moreover, according to Ronald, he never received the Ruth Bearden license for Station WPJR762 or the letter from the Commission, which canceled the license. (Tr. 177, 181, 209) The evidence, however, reveals that Ronald sent to John Black a facsimile copy of Ruth's license and a copy of the cancellation letter (see para. 28, supra).* [Bureau's

P.F.F. para. 60.] The Bureau is twisting the facts to make it appear as if Ron supplied testimony which is inconsistent with the record evidence. Ron testified that he never received the license or the letter directly from the Commission, not that he never received a copy of the license and letter. In fact, it was Defendant's counsel that requested a copy of the license and who then supplied copies to Ron. However, since the Bureau never asked the source of the documents, the Bureau has left it to itself to speculate as to the facts, rather than present evidence.

119. *Ronald and Patricia claimed repeatedly that the Sumpters (Jim, Norma, Jennifer and Melissa) wanted to become licensees, and that they signed their respective applications, which were filed at the Commission on July 18, 1996. (Tr. 400-03, 408-09, 414-26; 809-22; EB Ex. 17, p. 5; EB Ex. 19, pp. 4, 9; EB Ex. 22, p. 7; EB Ex, 35; EB Ex. 41; EB Ex, 49; EB Ex. 54)* [Bureau's P.F.F. para. 61.] The Bureau offers no evidence in its lengthy citation as to where Ron and Pat claimed that the Sumpters "wanted" to become licensees. The testimony and evidence relied on by the Bureau only shows that Ron and Pat claimed that the Sumpters had a willingness to participate in obtaining licenses to be managed by DLB. Ron and Pat had "a number of conversations with the Sumpters in regards to the business." (Tr. at 809.) Ron testified that it was Norma who suggested that the Sumpters do so to "repay the debt that they had on the 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.) Pat asked Norma if Melissa and Jennifer would be interested in obtaining licenses. (Tr. at 401, 809.) Norma responded that, "they...would need to talk to Jennifer....because she was not there, but that they would be interested."

(Tr. at 408-409.) Pat called Jennifer and "asked her personally would she mind." (Tr. at 816.) Jennifer said, "go ahead." (Tr. at 816.) Norma said that she would "talk to Melissa and see if she has any objections." (Tr. at 816.) Furthermore, Ron and Pat testified that they witnessed the Sumpter women signing the client copies, not that they witnessed the signing of the applications. (Tr. at 426-432, 825; EB Ex. 19 at 200, EB Ex. 19 at 208, EB Ex. 19 at 216.) Ron's and Pat's testimony with regard to the applications only includes a claim that together they picked up the applications at Jim's office, saw that the applications were signed, and assumed that each Sumpter had individually signed their respective applications. (Tr. at 421-422, 427, 822.) Ron didn't ask about the origins of the signatures because "there wasn't any reason to ask that question." (Tr. at 427.) Therefore, it is a misstatement for the Bureau to aver that Ron and Pat claim that the Sumpters each signed their respective applications or that such a claim would be inconsistent with the knowledge and beliefs possessed by Defendants.

120. *The Sumpters, on the other hand, repeatedly denied that they participated in the preparation of the 1996 applications or that they reviewed, signed or in any way authorized those applications before they were submitted to the Commission. (Tr. 1049-51, 1076-78, 1120-22; 1318-21; 1942-43; 2011-12, 2029- 2088-89, 2095, 2102; EB Ex. 34; EB Ex, 37; EB Ex. 39; EB Ex. 45; EB Ex. 47; EB Ex. 48; EB Ex. 52; EB Ex. 53; EB Ex. 55; EB Ex. 56)* [Burea's P.F.F. para. 61.] This statement is contrary to the record and the evidence cited does not support the assertion of a collective denial by the Sumpters. Testimony given by Jennifer directly contradicts the facts the Bureau is trying to establish. Jennifer was not surprised that there was an application in 1996 involving her

name. (Tr. at 1117.) "As far as the application went", Jennifer thought she knew about it "because [she] had gotten the card." (Tr. at 1116, 1120.) Although Jennifer thinks she never signed anything, she just "doesn't remember if she did or didn't." (Tr. at 1120-1121.) Furthermore, the Sumpter women executed letters to Ron and Pat stating, "I know that you used my name, but it I understood that if a channel was awarded, then you would immediately transfer it to your name." (EB Ex. 47, EB Ex. 53, EB Ex. 56.) Therefore, the Bureau's claim falls short of providing a complete recitation of the record, much less an accurate one.

121. *In addition to the Sumpters' consistent denials, the evidence reflects Diane's belief that Jim is trustworthy and reliable, Ronald's inconsistent claims, and testimony provided by the handwriting expert, Ms. Bolsover, that the Sumpters did not sign their 1966 applications and that Ronald dated Jim's application. (Tr, 2304, 2344-46, 2363-64 ; EB Ex. 35; EB Ex. 41; EB Ex. 49; EB Ex. 54; EB Ex. 75; EB Ex. 76).* [Bureau's P.F.F. para. 61.] This sentence is unintelligible and defendants have difficulty in ascertaining what the Bureau is attempting to establish here. The only thing that Defendants can make of this sentence is that the Bureau is reaching to make a conclusion of law in its fact finding. There is no support offered by the Bureau regarding Diane's belief that Jim is "trustworthy and reliable." While Ms. Bolsover could not identify Ron as the signor, the record shows that it is still undetermined as to who signed the applications. "[She] could not identify or eliminate anybody as having written these" applications. (Tr. at 2346.) However very rarely does Ms. Bolsover eliminate a party. (Tr. at 2346.) Furthermore, as has already been established in the preceding paragraph, the Sumpter denials are far from

consistent. Accordingly, the above statement is nothing more than a blunderbuss approach to proposing facts, shooting forth unsupported conclusions which are little more than Bureau testimony and which amount to little more than the Bureau's attempt at a mini-summation at an improper place within its pleading.

122. *Although the application purportedly signed by Jim is dated 6/18/96, Jim received a letter from Ronald, dated January 6, 1998, claiming that Ronald had seen Jim sign "a request for licenses" in July 1996. (EB Ex. 35, p. 4; EB Ex. 37, p. 27)* [Bureau's P.F.F. footnote 13.] The Bureau is overly selective in its use of the facts, and in so doing, attempts to spin the evidence to prejudice Ron. If an imperfect recitation of dates is a sign of inconsistency, then the Sumpters have been far from consistent. For instance, Melissa remembered signing an application "in the early 1990's", but would "say its closer to the late '80's, early 90's, but [she] doesn't know, [she] would say sometime before '93." (Tr. at 1315.) As the Bureau is fully aware, a harmless error contained in correspondence between the witnesses is hardly grounds for a finding of misrepresentation to the Commission.

123. *Similar conflicts as to the date and place of signing exist with respect to the applications or "request for license[s]" purportedly signed by Melissa and Jennifer (Compare EB Ex. 26 and EB Ex. 55, p. 11, with EB Ex. 49, p. 3; EB Ex. 54, p. 3)* [Bureau's P.F.F. footnote 13.] The citations provided by the Bureau fail to support the assertion that conflicts exist as to the date and place of signing of Melissa and Jennifer's applications. The exhibits relied on by the Bureau in making this statement refer to the dates and place of signing of the client copies, not the applications. Accordingly, Defendants cannot discern the basis

or point of the Bureau's statement other than to deny that the statement is useful for the purpose of proposing a finding of fact.

124. *Ronald and Patricia also testified at length (and submitted other sworn statements) that, in their presence, the Sumpter women signed (and Norma may have dated) "Client Copies" of their 1996 applications on June 22, 1996. (Tr.* **415-17**, **419-20**, *426-32; 822-25; EB 19, pp. 198-204, 206-08, 214-16; EB Ex. 22, pp. 7-8).* [Bureau's P.F.F. para 62.] Again, the Bureau is citing (and mis-citing) the record in a way that only states the content of that record, without demonstrating that a proposed finding of fact is offered.

125. *In direct conflict with those claims, the Sumpter women denied signing the "Client Copies," either for themselves or for another. (Tr. 1068-71,* **1073-74**; *1333–38; 2029-31 2089; EB Ex. 19, pp. 198-204, 206-08, 214-16).* [Bureau's P.F.F. para 62.] The testimony of Jennifer cited to by the Bureau, (Tr. 1068-1071), does not support the Bureaus's purported fact that the Sumpter women denied signing the client copies. Jennifer's testimony is not a denial, but a lapse in memory. Jennifer testified that the signature on the client copy "looked like her signature, but [she] doesn't believe [she] signed it." (Tr. at 1068-1069.) Her basis for this testimony is that "[she] doesn't remember signing anything Hill", nor does she remember going to Ron and Pat's house on a Saturday and signing. (Tr. at 1068-1069.) And the Bureau's selective misuse of the facts also does not include Ms. Bolsover's testimony, which was that the client copies appeared to have been signed by the Sumpter women. (Tr. at 2360-2361.)

126. *Moreover, Norma demonstrated that she could not have signed the "Client Copy" on June 22, 1996, as claimed by Ronald and Patricia because on that date, Norma was*

hundreds of miles away from the place of the supposed signing with Jim visiting a sick aunt. (Tr. 1797-98, 1943-44; 2032-46; EB Ex. 70) [Bureau's P.F.F. para 62.] Last minute revelations and evidence such as gas receipts and credit card billings cannot effectively establish as fact that Norma was with Jim in Junction, Texas on June 22, 1996. It was made apparent at the hearing that nowhere in EB Ex. 70 does it indicate that Norma was with Jim. (Tr. at 1943-1944.) Norma's name does not appear on any of the evidence presented in EB Ex. 70. The only evidence to support the Bureau's claim is the testimony of Jim and Norma. However, during her deposition, Norma did not recall being in Junction, Texas. (Tr. at 2032.) Norma only remembered going on this trip less than a week before she testified. (Tr. at 2032-2033.) This resurgence in memory just happened to be around the time when the Sumpters were engaging in their family meetings immediately before the hearing. (Tr. at 1123.) Additionally, the Bureau's cited record evidence is not dated on the relevant date, but rather, on the day after the signing of the client copies took place. Finally, the Bureau again conveniently fails to explain the lack of an executed client copy by Jim which, if the Bureau's theory is to be believed, should have been among the other client copies. It is not, and this evidence supports Defendants' claims regarding the signing of the client copies.

127. *Further, it appeared to Norma and Melissa that their signatures had been cut and pasted from other documents to their respective "Client Copies." (Tr. 1331-33; 2091)* [Bureau's P.F.F. para 62.] The Bureau fails to offer adequate support to establish this as a fact. The Bureau's only support for its proffered statement are citations to testimony by Norma and Melissa regarding only Melissa's signature. No evidence cited to by the

Bureau indicates that it appeared to Norma that her own signature had been lifted. Melissa testified that it looked like her signature, but she didn't sign it. Melissa claimed, "it could have easily been lifted from something." (Tr. at 1333.) However, Melissa further testified that the only documents she could think of that would be in Ron and Pat's possession were the November 1997 letter, (Tr. at 1335), and the transfer form in 1998, (Tr. at 1336), documents that were not in Ron and Pat's possession on the date of the execution of the client copies. Melissa noted that Ron and Pat may have had a Christmas or birthday card with her signature on it, but she signed those "usually just Melissa." (Tr. at 1336.) Ms. Bolsover testified that she reviewed Melissa's signature on the letter to Ron with the signature on the client copy and found that they were not "cut and pasted." (Tr. at 2342.) It is apparent that the Bureau is attempting to circumvent the clear order of the Court that excluded evidence of the kind offered as proof above, by attempting to subscribe to Norma testimony that was not obtained at trial.

128. *Finally, although Ms. Bolsover believed the signatures on the "Client Copies" were authentic, she also testified that the copies were of such poor quality that she could not determine whether the signatures were original to the documents or whether they were copied onto the documents. (Tr. 2348-49, 2360-63; Judges Ex. 3.)* [Bureau's P.F.F. para 62.] The Bureau misstates Ms. Bolsover's testimony. She stated that based on the quality of the copies, she could not tell if the signatures were put on there by any means other than having been originally written on the pages. (Tr. at 2363.) This statement is interesting in that it appears to be an effort by the Bureau to undermine its own witness' testimony if such testimony is not fully consistent with the Bureau's theory of the case.

The facts are that Ron and Pat testified to the signing of the client copies by the Sumpter women, Ms. Bolsover testified as to the authenticity of those signatures, and no one provided any proof (Melissa speculated wildly) that the signatures were placed on the copies by persons other than the Sumpter women.

129. *Ms. Bolsover further observed that at least two of the dates were identical, indicating that one or more of them were copied onto the documents. (Tr.2348-49, 2360-63; Judge's Ex. 3)* [Bureau's P.F.F. para 62.] The Bureau is inaccurately paraphrasing Ms. Bolsover's testimony. Bolsover testified that "two of the dates were identical", not "at least two" as the Bureau suggests. (Tr. at 2361.) The Bureau's insinuation that there could be more identical dates than just the two identified by Ms. Bolsover is a thinly veiled attempt to taint the record. Furthermore, the Bureau's assertion that "one or more" were copied is unsupported by the testimony. Ms. Bolsover testified that these facts imply to her that either "one or both of those dates was not original to the document." (Tr. at 2362.) There is no indication that the date on the third client copy was put there by any means other than by an original writing. Nor is the copying of dated copies inconsistent with defendants' testimony. The Defendants will also note that Ms. Bolsover "was looking at very poor photocopies." (Tr. at 2349, 2363.)

130. *In light of the foregoing, it is reasonable to infer that Sumpter women's signatures and the dates on the "Client Copies" were lifted from other documents and that only Ronald and/or Patricia could have taken or authorized such actions.* [Bureau's P.F.F. para 62.] The inference drawn by the Bureau is a conclusion of law, not a finding of fact. Furthermore, the evidence, as indicated above, does not support this statement. The

Bureau's own handwriting expert testified that the signatures appear "genuine". (Tr. at 2361.) The Bureau also fails to offer any indication as to why Ron and Pat would have to lift signatures and hide the fact from the Sumpters, as each of the Sumpters testified that they had voluntarily held licenses and/or signed applications in the past. (Tr. at 1058-1059, 1071, 1073, 1315, 1337, 1988-1989, 1953, 2004, 2124; EB Ex. 42.) Perhaps of greater problem, is the Bureau's failure to connect this allegation to the face of the applications which assured that Commission-related correspondence and, indeed, the licenses themselves, would go to the Sumpters. Therefore, for the Bureau to assert that the Sumpters were wholly unaware and innocent, it would need to explain just how the Defendants intended to get away with it, short of tampering with the Sumpters' mailboxes.

131. *The Bureau notes that Norma's signature on her "Client Copy" appears identical to her signature on the assignment application she executed in 1998. (Compare EB Ex. 19, p. 200 with EB Ex. 20, p. 19)* [Bureau's P.F.F. footnote14.] This statement should be stricken because the Bureau is attempting to circumvent the Court's order. The Bureau is not an expert witness and is testifying as to the similarities of the signatures. In doing so, the Bureau is testifying without the opportunity for opposing counsel to cross examine, whereupon, Defendants are confident that the Bureau's testimony would be disallowed due to the Bureau's failure to produce expert qualifications.

132. *However, none of the Sumpters authorized Ronald to submit the "Opposition." (EB Ex. 37, p. 2; EB Ex. 55, p. 3; Tr. 1323)* [Bureau's P.F.F. para. 63.] The Bureau's statement that "none of the Sumpters" authorized the Opposition is at odds with the record. 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 14-18.) Jim believed Ron was faxing the Opposition to him "to relieve [Jim's] anxiety about this situation, that [Ron] was going to take care of it." (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, as long as Ron took care of it, and "if this opposition would take care of it, [Jim] was just as happy to have do it and file it." (Tr. at 1854.) Jim never told Ron that he did not want Ron to address the allegations on his behalf or that Jim would respond on his own, 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 do with this document." (Tr. at 2187.) Furthermore, Jennifer's declaration indicates that she had not "seen" the draft Opposition which was provided to her father, not that she did not authorize Ron to file it with the Commission on her behalf. (EB Ex. 55 p. 3.) In sum, as in many matters, the Sumpters deferred to Jim's judgement and, in so doing, authorized the pleading.

133. *Moreover, as noted above, the Sumpters did not file or authorize the filing of the 1996 applications. (Tr. 1049-51, 1076-78, 1120-22; 1318-21; 1942-43; 2011-12, 2029, 2102; EB Ex. 34; EB Ex. 35; Ex, 41: EB Ex. 49: EB Ex. 54)* [Bureau's P.F.F. para. 63.] As has previously been noted, the record is replete with actions taken by the Sumpters which indicate not only a grant of authority but also an intent to ratify the actions taken by Ron and Pat on behalf of the Sumpters. These actions include the execution of client copies,

(Tr. at 427-428, 431-432, 825; EB Ex. 19 at 200, EB Ex. 19 at 208, EB Ex. 19 at 216), and the letters sent by the Sumpter women stating that, "I know you had used my name but I understood that if a channel was awarded then you would immediately transfer it to your name." (Tr. at 1098-1099, 1347, 1371, 2051; EB Ex. 47, EB Ex. 53, EB Ex. 56.) The Bureau's own handwriting expert believes it is probable that the Sumpter women 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.)

134. *Finally, the Sumpters had no role, much less control, with regard to the licenses that the Commission had issued to them. (Tr. 1065- 68; 1344-50; 1784-91; 2099-2105; EB Ex. 34: EB Ex. 37, pp. 1-4; EB Ex.45, p.3; EB Ex, 52, p. 3; EB Ex. 55, p. 4)* [Bureau's P.F.F. para. 63.] The Bureau is overly selective in its use of facts in support of its claim that the Sumpters had no role with, nor control of the licenses. The Bureau relies solely on the testimony of the Sumpters and neglects to address evidence and testimony that might show otherwise. Ron testified that he turned off the stations associated with Norma's and Melissa's licenses upon such request from Norma. (Tr. at 560.) Ron also assisted the Sumpters with the transfer of the licenses out of their names when requested to do so. (Tr. at 1064, 1347, 1371, 1382-1383, 1771, 1774-1775, 2062-2064, 2192; EB Ex. 38, EB Ex. 39, EB Ex. 47, EB Ex. 46, EB Ex. 53, EB Ex. 56.) Jennifer and Melissa's licenses were cancelled when they chose not to execute the Form 800A's. (Tr. at 1062, 1330; EB Ex. 52 at 12, EB Ex. 55 at 16.) These are just some of the facts which indicate that the Sumpters not only played a pivotal role with their licenses, but more importantly, that each retained absolute control of their licenses.

135. *In his December 4, 1998, response to a November 9, 1998, Commission inquiry, Ronald, in responses 1 (c) and 1 (d), indicated that the Sumpters received and reviewed reports and/or otherwise supervised "their" respective stations. (EB Ex. 17, p. 4)* [Bureau's P.F.F. para. 64.] The Bureau misstates Ron's response. Ron indicated that he "makes reports available". (EB Ex. 17 p. 4.) Nothing in Ron's response suggests that he sent reports to any of the licensees, namely the Sumpters. Ron made the reports available and therefore it was up to the initiative of the licensees to request and review those reports. The making available of such documents is wholly consistent with the actions typically taken by managers of private radio stations.

136. *As noted above, the Sumpters had no role whatsoever in the operation and management of "their" stations. (Tr. 1065-68; 1344-45, 1348-50, 1378-79; 1783-89, 1791, 1819, 1964-65; 2059-64, 2065, 2072-74, 2099-2103; EB Ex: 35, p. 30; EB Ex. 46; EB Ex, 55, p. 3)* [Bureau's P.F.F. para. 64.] This statement is a conclusion of law. Furthermore, each Sumpter retained the power to cancel their license at anytime. This is apparent by the actions of Jennifer and Melissa, which resulted in the cancellation of their licenses. (Tr. at 1061- 1062, 1330; EB Ex. 52 at 12, EB Ex. 55 at 16.) Each Sumpter requested a license transfer. (EB Ex. 39, EB Ex. 40, EB Ex. 47, EB. Ex. 53, EB Ex. 56.) The Sumpter accounting firm played its role in the operation of the licenses by its "setting up of the books and controlling how the T-Band information was coming through." (Tr. at 447-448.) Jim, Norma, (Tr. at 1987), Jennifer, (Tr. at 449, 1046), and Melissa, (Tr. at 450), each worked at the Sumpter accounting firm at some point during the relevant

period of time. Therefore, to say that the Sumpters had "no role whatsoever" is factually unsupported by the record.

137. *Specifically, the response suggested that the Sumpters were recruited because they committed to provide funds and/or reimburse DLB in the event the stations were unprofitable. (Id., pp. 3-4)* [Bureau's P.F.F. para 65.] The Bureau mis-characterizes DLB's response. DLB revealed a checklist of things DLB looks for in entering a business relationship. One such factor being the willingness to provide funding. (EB Ex. 19 pp. 3-4.) Nothing in the response mentions "committed" to provide funds as a factor nor suggests that the Sumpters did so. Furthermore, the response mentions nothing in regards to reimbursement in the event the stations were not profitable.

138. *Additionally, in sections 7(a) and 11, DLB claimed that the Sumpters (and the other licensees) received use of three control stations and five mobile units worth approximately $7,600 and air-time worth approximately $200 per month on a cost-free basis in lieu of receiving cash. (Id., pp. 6, 10)* [Bureau's P.F.F. para 65.] The Bureau has confused the facts. DLB's response does not claim that any other licensees, aside from the Sumpters, received use of the three control stations, five mobile units and air-time worth approximately $200. (EB Ex. 19 at 10.) Additionally, the claim is based on Ron's recollection at the time, which Ron believed to be fully accurate when made. There is no evidence that Ron had a contrary belief when the claim was made.

139. *Finally, DLB claimed that the Sumpters "approved" major purchases. (Id., p. 7)* [Bureau's P.F.F. para 65.] The Bureau misstates the claims of DLB. In the response referred to by the Bureau, DLB stated that the Sumpter accounting firm approved major

purchases, not that the Sumpters personally approved these purchases. (EB Ex. 19 at 7.) Indeed, the testimony shows that Jim Sumpter provided substantial advice regarding the timing of purchases and that Pat followed his advice.

140. *As noted above, the Sumpters did not make any commitments to provide funds or reimburse DLB; they did not even know about the 1996 applications and licenses until November 1997. (Tr. 1117; 1320, 1322, 1436; 1762-65; 1845; 2029, 2053, 2099)* [Bureau's P.F.F. para. 66.] Once again the Bureau is drawing a supposition based on the faulty premise that the Sumpters had no knowledge of the 1996 applications. This matter has been addressed on numerous occasions throughout this Reply, and it is evident that such an assertion is contrary to the record. The Sumpter women executed client copies which indicate that they had knowledge of the 1996 applications. (Tr. at 427-428, 431-432, 825, EB Ex. 19 at 200, EB Ex. 19 at 208, EB Ex. 19 at 216.) The Bureau's own handwriting expert testified that the signatures on the client copies appear to be "genuine." (Tr. at 2361.) The Sumpter women each executed a letter to Ron and Pat stating that they knew their names were used, but understood that if a license was awarded it would then be transferred. (Tr. at 1098-1099, 1347, 1371, 2051; EB Ex. 47, EB Ex. 53, EB Ex. 56.) This shows not only that the Sumpters had knowledge of the licenses, but that they had knowledge of the applications at the time of filing. Furthermore, Jennifer testified that she was not surprised that there was a 1996 application in her name. (Tr. at 1117.)

141. *Further, Jennifer was the only Sumpter ever to use DLB equipment, and her use of that equipment ended in 1992 following a sale of that asset (as well as others) to Fleet Call.*

(Tr. 566; 1046, 1094-95; 1180-87; 1342-45; 1743-44, 1791-94, 1905-09; 2020-21, 2024-25) [Bureau' P.F.F. para. 66.] The Bureau misstates the testimony as to why Jennifer's use of the equipment ended in 1992. Jennifer's use of the equipment ended as a result of her decision to get a new car, not because of the sale of any asset to Fleetcall. (Tr. at 1095-1096, 1181, 2021-2023.) Further, the sale to Fleet Call involved 800 MHz facilities. Jennifer's car phone was a 900 MHz device and was not effected by the previous sale.

142. *Moreover, it was only after the Sumpters' receipt of the Net Wave petition that Ronald broached the subject of their radio usage as being DLB's payment to them. (TR. 2206)* [Bureau's P.F.F. para. 66.] By its use of the term "broached" the Bureau is misstating the facts. This sentence insinuates that Ron instigated the conversation with regard to the equipment and Sumpter usage. However, the record indicates that it was the Sumpters who initiated this conversation. (Tr. at 2206.)

143. *In their capacities as licensees, the Sumpters never "approved" any purchase made by DLB (***Tr. 1738-40***).* [Bureau's P.F.F. para. 66.] The Bureau's lack of an accurate citation to the record renders the statement improper Bureau testimony which, in any event, Defendants deny, including as an obvious conclusion of law.

144. *However, this testimony is contrary to the November 25, 1997, "Opposition" submitted by DLB, which reflects that all of the Sumpters' stations were among those that were "fully constructed, in operation, and fully loaded...." (EB Ex. 2, p. 2)* [Bureau's P.F.F. para. 67.] The contradiction between Defendant's testimony and the Opposition can be accounted for as a direct result of mis-communication between Defendant and

Defendant's counsel. In the drafting of the Opposition by counsel, Defendant was unschooled as to what counsel was asking as to the construction, operation and loading of the stations. At the time of the filing of the Opposition, Ron did not know the importance of these stations being turned off. The fact that Ron did not mention this until later should not be the prevailing test as to the accuracy of his statements. If this were the case, then the Bureau should not be permitted to rely on Norma's testimony as to her whereabouts during the signing of the client copies. (Tr. at 2032.) After all, she did not recall this until a week before her testimony. (Tr. at 2032-2033.) Nor would Ron have noted that the statement was, necessarily, incorrect, as the subject stations were indeed constructed and made operational.

145. *Ronald's claim is also refuted by Norma, who specifically denied making such a call or even knowing about her station in February 1997, and by Carolyn Lutz, who did not recall receiving any instruction from Norma to turn off stations. (Tr. 1137-38; 2099)* [Bureau's P.F.F. para. 67.] The Bureau mis-characterizes the testimony given by Norma. Nowhere in the Bureau's citation to Norma's testimony does it indicate that she refuted Ron's claims or specifically denied making such a call. (Tr. at 2099.) As for the Lutz testimony, (Tr. at 1137-1138), the fact that she does not recall the phone call does not support a finding that said phone call did not occur. This is just one of the many things Lutz failed to recall in this hearing. Perhaps of greater significance is the Bureau's failure to produce contrary evidence. The Bureau, by placement of a phone call to the local field office, could have determined the operational status of each facility during each stage of its investigation and have employed that information at trial. Since the Bureau did not

engage in this basic investigation technique, it is not positioned to suggest a finding of fact that is contrary to the unrebutted testimony provided by Ron.

146. *He thus would have had no apparent basis for comparing the effects of such loss on DLB's business or customers.* [Bureau's P.F.F. footnote 16.] The Bureau offers no support as to why David's absence would not give him an apparent basis for comparing the effects (on DLB or its customers) of Norma and Melissa's stations being shut down.

147. *Finally, the Bureau notes that David admitted that he had no personal knowledge that Norma's and Melissa's stations were actually turned off; he so testified only because he had heard Ronald say it. (Tr. 1032.)* [Bureau's P.F.F. footnote 16.] The Bureau misstates David's testimony. David testified that he had no personal knowledge of Melissa and Norma's "requests", not that he had no knowledge that the stations were actually turned off. (Tr. at 1032.)

148. *In December 1998, Ronald's response to a Commission inquiry included the claim that: "Each licensee retained its right to sell, transfer, remove from management, or cancel its license at any time." (EB Ex. 17, p. 3)* [Bureau's P.F.F. para. 68.] As the surrounding circumstances indicate, each licensee did retain the rights referred to in Ron's response. Jennifer and Melissa each exercised their right to cancel their licenses. (Tr. at 1062, 1330; EB Ex. 52 at 12, EB Ex. 55 at 16.) Jim, (Tr. at 1773-1775, 1783, 2062-2064; EB Ex. 40, EB Ex. 20 at 17), Norma, (Tr. at 2062-2064; EB Ex. 20 at 19, EB Ex. 47), Ms. Lutz, (Tr. at 1172-1173; EB Ex. 61), and Thomas Lewis, (Tr. at 700-701, 981), each requested a transfer of their licenses when they no longer wished to be Commission licensees.

149. *It also contended that licensees, including Carolyn, received and reviewed reports and/or otherwise supervised "their" respective stations. (EB Ex, 17, p. 4)* [Bureau's P.F.F. para. 68.] Ron's response indicated that he "makes reports available". (EB Ex. 17 p. 4.) For licensees to receive reports suggests that Ron or DLB sent reports to them. Nothing in the response suggests that Ron sent reports to any of the licensees, including Lutz. Ron made the reports available and it was up to the initiative of the licensees to request and review those reports. No evidence nor testimony introduced into the record purport to show that Ron or DLB ever withheld the reports from the licensees of any station managed by DLB. As for Ms. Lutz, she was fully capable of reviewing the company's records to determine the use of her station.

150. *However, as made clear from the facts recited earlier, Carolyn never functioned as a licensee.* [Bureau's P.F.F. para. 69.] This is an improper conclusion of law. The Bureau offers no citation to the record to support this erroneous statement.

151. *She merely gave Ronald and Patricia permission to use her name and otherwise had nothing to do with "her" station except insofar as it pertained to her duties as a DLB employee. (Tr. 1191-93; EB Ex. 63)* [Bureau's P.F.F. para. 69.] The facts show that Ms. Lutz attempted to renegotiate the terms of the written management agreement with DLB. (Tr. at 495-496, 1261; RB/PB Ex. 1.) Ms. Lutz "wanted to keep full authority of FCC rules in her hands." (Tr. at 496; RB/PB Ex. 1.) "[She] wanted to have an increase in...salary, increase in vacation time, and a lot of other little rules that she wanted and also additional type of money, so much per profit and everything else, per each year." (Tr. at 496; RB/PB Ex. 1.) Ms. Lutz demanded in her counteroffer "that [she] would receive

certain amounts of money for [Ron] being the agent and managing [her] station, [Ron] would pay [her] a certain amount of money, and also that [Ron] would give [her] an extra week of vacation." (Tr. at 1197.) In so doing, Ms. Lutz was not functioning merely as an employee of DLB, but on her own as an authorized Commission licensee. Therefore, it is inaccurate for the Bureau to state that Ms. Lutz had "nothing to do with her station."

152. *During the hearing, Ronald and Patricia asserted that Carolyn had approached Patricia about applying for a license at Allen.* (**Tr. 479**, *542; 831-33)* [Bureau's P.F.F. para. 70.] Standing alone, this sentence merely reflects the content of the hearing and does not include a proposed finding of fact.

153. *Patricia also testified falsely when she said that Carolyn got the idea while typing the list of addresses in EB Ex. 66 (Tr. 831-33)* [Bureau's P.F.F. para. 70.] The Bureau is asserting its own subjective interpretation of the facts in stating that Pat testified falsely. The Bureau offers no substantive evidence that Pat's testimony was false. Whether Pat testified falsely is a matter to be addressed in the Conclusions of Law and, at best, the Bureau is positioned only to recite that the record testimony contains contradictions as between Ms. Lutz and Pat.

154. *As noted, the true story is that Ronald approached Carolyn and asked her to apply for the license. (Tr. 1162)* [Bureau's P.F.F. para. 70.] The Bureau fails to employ the entire record. The Bureau neglects to include the testimony of Ron as to why he approached Ms. Lutz. In so doing, the Bureau fails to tell the whole story and, thus, the "true story". Ron testified that he approached Ms. Lutz only after learning from Pat that Ms. Lutz had expressed an interest in obtaining a license in her name. (Tr. at 542.)

155. *Further, Carolyn agreed to do it as a favor to Ronald.* *(***Tr. 1166-69***)* [Bureau's P.F.F. para. 70.] Not only do the Bureau's citations not support the proposed finding of fact, the testimony and record evidence also do not support the assertion that Ms. Lutz applied for a license as a favor for Ron. Ms. Lutz received valuable consideration for the use of her license with the installation of a radio-phone in her car. (Tr. at 1160-69.) The installation of this radio-phone was a benefit recognized by Ms. Lutz. (Tr. at 1166-1169.) Furthermore, Ms. Lutz attempted to renegotiate the terms of the written management agreement. (Tr. at 496, 1197, 1261; RB/PB Ex. 1.) This action is uncharacteristic for a person claiming to have applied for a license as a favor.

156. *Moreover, in light of the foregoing, the Bureau submits that Carolyn did not type the list of addresses sent to John Black. Rather, as Carolyn testified, she would not have made (and did not make) the errors contained in that list, such as the inconsistent letter cases (sometimes small sometimes all capitals) and wrong addresses (Norma's, Melissa's and one of David's) , (Tr. 1219-26; EB Ex. 19, 229. See also* **Tr. 1265***.)* [Bureau's P.F.F. para. 70.] The substance of the Bureau's argument is weak. Ms. Lutz's duties as office manger were "basically still secretarial/receptionists." (Tr. at 1135.) She did secretarial work for the management staff, the sales staff, and the service manager. (Tr. at 1135.) Part of her duties in this capacity would include typing correspondence, (EB Ex. 63 at 1), and sending faxes. To rely solely on Ms. Lutz's testimony that she would not have made these mistakes is far from supportive. The Bureau offers no other testimony or documentary evidence that can show that Ms. Lutz would not have made such mistakes. The evidence simply does not support Ms. Lutz's secretarial competence, her authority to

change the content of correspondence when she believed the content to be in error, her contemporaneous knowledge of whether mistakes appeared on the list, etc...

157. *The truth was that no one had ever made such a promise to Carolyn, and she never received such equipment or service or anything else of value. (Tr. 514; 1176-79)* [Bureau's P.F.F. para. 71.] The Bureau fails to support its notion that Ms. Lutz never received equipment, service or anything else of value. Tr. 514 acknowledges that Ms. Lutz did not receive cash for the use of her license, but it also notes that she received the value of the use of her radio-phone. Ms. Lutz testified that she recognized the benefit of the car radio-phone as the bargained for exchange in return for the operation of a license in her name. (Tr. at 1169.) Tr. 1176-79 also does not support the Bureau's notion. This cited testimony offers evidence that Ms. Lutz received a radio-phone and that she used this phone, facts that are contrary to what the Bureau is attempting to establish.

158. *Rather, as noted earlier, Carolyn had a single radio-phone in her car while she worked for DLB, which had been installed, at Patricia's suggestion, so that Patricia could reach Carolyn when Carolyn was running errands. (Tr. 1159-60- 1177-79)* [Bureau's P.F.F. para. 71.] The Bureau fails to employ the entire record as to why Pat suggested that Ms. Lutz have the phone installed. Ms. Lutz testified that, "Ron never got around to putting one in [her] car." (Tr. at 1159-1160.) Her testimony further indicates that it was Pat's suggestion only because Pat was surprised that it had not yet been installed in accordance with the previous arrangement set up by Ron. (Tr. at 1159-1160.) Furthermore, the Bureau improperly suggests that the radio-phone was installed so that Pat could reach Ms. Lutz. Ms. Lutz testified that the phone was more or less used for business purposes by

office personnel and service personnel to contact her (Tr. at 1159-1160, 1177-1179), not just by Pat. However, the radio-phone was not solely used for business purposes. Ms. Lutz acknowledged that she used this phone for personal use as well. (Tr. at 1179.)

159. *In responding, Ronald did not address this point in the "Opposition," and David did not see any problem with it. (EB Ex. 2; Tr. 912, 914)* [Bureau's P.F.F. para. 72.] The Bureau herein attempts to twist the facts to make it appear as if David had no problem with the erroneous presumption that D.L Brasher was Diane. The Bureau offers no testimony where David indicates that he had knowledge of this presumption made in the Net Wave Petition. The Bureau's citations merely suggest that David had "no problem" with the Opposition drafted by counsel for Ron.

160. *David viewed the agreements as simply correcting the situation. (Tr. 931)* [Bureau's P.F.F. para. 72.] The Bureau is vague as to what situation David thought he was correcting. By the way the Bureau offers this sentence, it appears as if the Bureau is asserting that David thought this would correct the confusion as to the D.L. Brasher matter. The record does not support such a finding. David's testimony suggests that he viewed these agreements as correcting the real party in interest claims brought by the Net Wave Petition.

161. *It appears that David disguised his handwriting on one of the agreements and in a related assignment application. (Compare EB Ex. 20, p. 11, with EB Ex 20, p. 12.)* [Bureau's P.F.F. footnote 17.] The Bureau is not an expert witness and its statement that something "appears" as anything is not a properly offered proposed finding of fact. Even