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

In the Matter of	)	
	)	
Ronald Brasher	)	
Licensee of Private Land Mobile Stations	)	EB Docket No. 00-156
WPLQ202, KCG967, WPLD495, WPKH771,	)	
WPKI739, WPKI733, WPKI707, WIL990,	)	
WPLQ745, WPLY658, WPKY903, WPKY901,	)	
WPLZ533, WPKI762, and WPDU262	)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Hon. Arthur I. Steinberg,
Administrative Law Judge

OPPOSITION TO MOTION TO DISMISS
DESIGNATED APPLICATIONS

Ronald Brasher, Patricia Brasher and DLB Enterprises, Inc. d/b/a Metroplex Two-Way Radio (hereinafter collectively DLB), by their attorneys, pursuant to 47 C.F.R. §1.45(b) and 47 C.F.R. §1.294(c)(3) hereby oppose the Bureau's Motion to Dismiss Designated Applications (hereinafter "Motion") filed July 2, 2002.[1]

The Bureau's Motion is Procedurally Deficient

The Bureau filed its above referenced Motion without providing any codified authority for said filing. It is a well excepted principle of practice before the Commission that requests for action by the Commission or some delegated authority must state with particularity the grounds and authority on which the request is based.[2] The Bureau's lack of cited authority for the filing

[1]The signature page of the Motion indicates that it was prepared and executed on July 2, 2001. DLB assumes that this Motion was actually prepared, executed and filed on July 2, 2002.

[2]*See, i.e.,* 47 C.F.R. §1.727(a)

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of its Motion leaves DLB to guess at which rule section(s) would be applicable to its Opposition, and the attendant filing deadlines relevant thereto.

In an abundance of caution, DLB requests waiver of any time deadline for responding to the Bureau's Motion that may be applicable to the instant matter if deemed untimely. Therefore, for the purposes of providing the Court a balanced approach to this unusual Motion, DLB respectfully requests the Court take notice of the Opposition provided herein.

Unintended Consequences

The Bureau's unusual motion might create unintended consequences in this matter, suggesting that cancellation of the Sumpter licenses is appropriate for reasons other than those arising out of administrative actions in furtherance of the Sumpters' joint request for that cancellation. To the contrary, such action would be wholly administrative in nature and likely unnecessary as a request before the Court in view of the Bureau's earlier relevant order[3], perhaps improperly requesting that the Court involve itself as a participant in the Bureau's earlier *sua sponte* action to cancel the Sumpter licenses, thereby rendering moot any application to assign those licenses to DLB. If, as DLB cannot determine, the Court's involvement is either required or advisable for the purposes proposed by the Bureau, DLB does not oppose any purely administrative assistance which the Bureau deems necessary to provide it an opportunity to assign the licenses to persons who might make use of the channels, rather than allow valuable spectrum to lie fallow.

To assist the Court in determining what actions might be advisable, DLB hereby avers

[3] 16 FCC Rcd 16675 (2001).

that it has ceased long ago all operation on the subject channels authorized by the Sumpter licenses.[4] At considerable expense and loss of operational efficiencies, DLB has shut down all relevant transmitters and has caused its customers' fleets to no longer be able to access use of the subject facilities for the receipt of service. Although this action was not without considerable expense and effect on the overall profitability of DLB's enterprise, DLB deemed such action wholly appropriate and in accord with its recognition of its duties as a Commission licensee. In fact, DLB continues to pay site rental for those transmitters' occupation of the relevant towers, despite the fact that DLB is not operating those transmitters and will likely never operate those facilities in the foreseeable future. Accordingly, DLB seeks to be fully cooperative with the Bureau's efforts to make effective the use of the subject channels and this Opposition is not intended to create any specific difficulty in the Bureau's efforts. However, DLB must act with understandable caution in assuring that the record within this proceeding does not create any unintended prejudice to DLB.

DLB has already noted that the Bureau's earlier Order[5] resulted in a *de facto* decision regarding the disposition of the Sumpter licenses and the associated applications for assignment of those licenses to DLB, which applications are a portion of those matters before this Court.

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[4]"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.)" Ronald Brasher, Patricia Brasher and DLB Enterprises, Inc. d/b/a Metroplex Two-Way Radio's Proposed Findings of Fact and Conclusions of Law, at ¶100.

[5]*Infra.* at fn. 3.

Although DLB contends that the Bureau's Order was premature in view of the Court's authority over all relevant matters, DLB did not oppose that Order, as the substantive basis for the Order was in accord with the relevant facts of this matter, i.e. that the assignors did not wish to be licensees and did not wish to forward or participate in the applications for assignment. Accordingly, despite DLB's discomfort with the manner in which the Bureau acted pursuant to its Order, DLB believed that such administrative action, for the purpose of furthering the public interest in making available unused radio spectrum, was advisable in the objective. That the Bureau did not, until recently, decide that any involvement by the Court was necessary or advisable is quite curious, but perhaps of no great matter.

Conclusion

DLB, however, again notes that the cancellation of the subject licenses and the dismissal of the associated applications for assignment continue to raise the question of whether the matters before the Court have been rendered effectively moot for the purpose of imposition of any greater sanctions upon defendants. The Bureau's Motion emphasizes that the Bureau has condemned the spectrum which was the nexus of all claims against the defendants and has taken or will take all necessary steps to reassign those channels to other licensees. By its Motion the Bureau has again emphasized that it has fully exercised its authority to punish the defendants *via* its licensing authority, while rendering a concurrent decision that has fully immunized the Sumpters from any future sanctions being imposed on those persons. In effect, the Bureau has ruled on behalf of the Court, passed sentence on behalf of the Court, decided the issue of culpability as to each of the originally named defendants on behalf of the Court, and moves that

the Court participate in the Bureau's actions. Insofar as any such action by the Court might be viewed as providing consensus to the Bureau's earlier statements in support of the Bureau's unilateral decisions, DLB opposes such action. Insofar as the Court's ruling is articulated as merely assisting with any administrative issue which is required to allow the Wireless Telecommunications Bureau to make effective use of the subject channels, without any concurrent implications regarding the outcome of this matter, DLB does not oppose such action.

Respectfully submitted,

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Counsel For Defendants

Dated: July 15, 2002

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CERTIFICATE OF SERVICE

I, Ava Leland, hereby certify that the original and copies of the foregoing Opposition in EB Docket No. 00-156 was served by hand delivery and/or facsimile upon the below listed parties on this 15th day of July, 2002.

Mr. Charles W. Kelley
Ms. Judy Lancaster
Mr. Bill Knowles-Kellett
Federal Communications Commission
Enforcement Bureau
445 12th Street, S.W., Room 3B443
Washington, D.C. 20554
– *via Hand Delivery and Facsimile*

Hon. Arthur I. Steinberg
Administrative Law Judge
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Ava Leland

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