

OCT - 2 2003

Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of) EB DOCKET NO 00-156
))
Ronald Brasher)
Licensee of Private Land Mobile Stations)
WPI Q202, KCG967, WPLD495, WPKH771,)
WPK1739, WPK1733, WPK1707, WIL990,)
WPLQ475, WPLY658, WPKY903, WPKY901,)
WPLZ533, WPK1762, and WPDU262)
Dallas/Fort Worth, Texas)
))
Patricia Brasher)
Licensee of Private Land Mobile Stations)
WPI1362, WPKY900, and WPLD570)
Dallas/Fort Worth, Texas)
))
David Brasher)
Licensee of Private Land Mobile Stations)
WPBU651 and WPJR757)
Dallas/Fort Worth, Texas)
))
D.L. Brasher)
Licensee of Private Land Mobile Station WPJR750)
Dallas/Fort Worth, Texas)
))
O.C. Brasher)
Licensee of Private Land Mobile Station WPIR761)
Dallas, Fort Worth, Texas)
))
Metroplex Two-Way Radio Service)
Licensee of Private Land Mobile Stations)
WPHS735, WPKP673, WPKM797,)
WPLZ841 and WPJR754)
Dallas/Fort Worth, Texas)
))
DLB Enterprises, Inc.)
Licensee of Private Land Mobile Stations)
WPKM796, WPKL830, WPJY510, WPLU490,)
WPBH830, WPKP667, WPLY713, WPMH354,)
WPMH477, and WPKY978,)
Dallas/Fort Worth, Texas)

(+)

W NAH223)	
Cleora, Oklahoma)	
)	
DLB Enterprises, Inc.,)	
Applicant for Conventional Industrial/Business)	File Nos AO17774,
Private Land Mobile Licenses)	AO20241 and AO19157
Dallas, Texas)	
)	
Applicant for Conventional Industrial/Business)	File No AO18555
Private Land Mobile Licenses)	
Crowley, Texas)	
)	
Applicant for Trunked Industrial/Business)	File No AO20755
Private Land Mobile Licenses)	
Crowley, Texas)	
)	
Applicant for Assignment of Private Land Mobile)	File No. D110637
Station WPJR740 from Jennifer Hill)	
Dallas, Texas)	
)	
Applicant for Assignment of Private Land Mobile)	
Stations from Ronald Brasher (WPKI707,)	
WPKI739, WPKI733 and WPLQ475), Norma)	File No. D113240
Sumpter (WPJR739), D L Brasher (WPJR750),)	
David Brasher (WPJR757), Jim Sumpter)	
(WPIR725), Jennifer Hill (WPJR740),)	
Metroplex Two-Way Radio Service (WPJR754),)	
O C Brasher (WPJR761), Melissa Sumpter)	
(WPIJ437) Dallas, Texas)	
)	
Applicant for Assignment of Private Land Mobile)	File No. D113242
Station)	
)	
Applicant for Modification of Private Land Mobile)	
Stations WPKM796, and WPKL830, and)	File No D113241
Assignment of Private Land Mobile)	
Stations WPKI733, WPLQ475, WPKI707)	
and WPKI739 from Ronald Brasher)	
and Assignment of Private Land)	
Mobile Station WPKM797 from Metroplex)	
Dallas, Texas)	

To The Commission

ENFORCEMENT BUREAU'S CONSOLIDATED REPLY TO EXCEPTIONS

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SUMMARY

The Initial Decision (the "ID") in this proceeding properly recognized that Ronald Brasher, Patricia Brasher and DLB Enterprises, Inc. d/b/a/ Metroplex Two-Way Radio Service ("DLB") perpetrated on the Commission an elaborate scheme of deception, misrepresentation and unauthorized transfers of control. The evidence demonstrates that, in 1996, Ronald and Patricia Brasher operated DLB, a two-way radio sales and service company that they own. DLB had an opportunity to serve new large customers, and thus dramatically increase its profits, if it could obtain the necessary 470-512 MHz (U-band) licenses to meet those customers' needs. The Brashers understood that the FCC limited each applicant before it to only one U-band frequency at a time, until all channels had been constructed and loaded. In order to circumvent this limitation, they concocted a scheme to obtain the necessary frequencies by applying for licenses in the names of two deceased persons and four of their relatives who were totally unaware that applications were being filed in their names. The Brashers and DLB, the real parties-in-interest behind these applications and the resulting licenses, exercised control over the licensed facilities. When the FCC investigated their illegal scheme, the Brashers filed false and misleading responses to the Commission's inquiries.

The Initial Decision appropriately concluded that the Brashers and DLB engaged in this fraud and, as a result, are not basically qualified to be Commission licensees. The Initial Decision also properly recognized that disqualification is appropriate where an unauthorized transfer of control is accompanied by deception. The Bureau submits that, based upon the record evidence, the ID correctly concluded that the Brashers and their company are not qualified to be Commission licensees and that their captioned authorizations should be revoked.

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WPL7533, WPK1762, and WPDU262)
Dallas/Fort Worth, Texas)
Et al)

To: The Commission

ENFORCEMENT BUREAU'S CONSOLIDATED REPLY BRIEF TO EXCEPTIONS

1 On September 8, 2003, Ronald Brasher, Patricia Brasher, and DLB Enterprises, Inc. d/b/a Metroplex Two-Way Radio Service (collectively, the "Brashers") each filed exceptions to the *Initial Decision of Administrative Law Judge Arthur I. Steinberg*, FCC 03D-02, released August 8, 2003 (the "I.D."). Pursuant to Section 1.277(c) of the Commission's rules,¹ the Enforcement Bureau (the "Bureau"), hereby submits its Consolidated Reply to Exceptions (the "Reply"). The Bureau emphasizes that its failure herein to comment on any particular exception or argument should not be construed as a concession to the correctness or accuracy of the exception or argument.

I. COUNTERSTATEMENT OF THE CASE

2 Patricia Brasher ("Patricia") and her husband, Ronald Brasher ("Ronald"), hold all of the outstanding stock of DLB Enterprises, Inc., d/b/a Metroplex Two-Way Radio ("DLB") (Tr. 48, 168, 753-54). Patricia owns 60 percent of the stock of DLB and Ronald holds the remaining

¹ 47 C.F.R. § 1.277(c). See also *Order*, FCC 03I-02, released September 22, 2003, which authorized the Bureau to file its Reply no later than 10 days after release of the *Order*.

40 percent (Tr. 753-54). Patricia founded DLB in 1982 and serves as its President (Tr. 751-52) Ronald is a Vice President and has been working for DLB since 1984 (Tr. 56-7, 1557).

3. DLB provides a two-way radio service, selling access to repeater stations (Tr. 61, 763-64) Repeaters are used to enhance the range of mobile radios (Tr. 766). DLB's clients are primarily business and industrial customers who pay monthly fees to use this service (Tr. 153; 886-87, 1272) DLB operates a number of stations, each of which is comprised of a repeater and related equipment (Tr. 127-130). In addition to operating its own stations, DLB has operated and managed stations that are licensed to others, including Patricia and Ronald, as well as stations licensed to various relatives of Patricia, as discussed below (EB Ex. 4; EB Ex. 17, p. 3)

4. In 1995, two cement-hauling/concrete companies approached Ronald about using DLB's services to serve their 600 to 800 mobile units (Tr. 97-106, 576, 1017). In order for DLB to amass the channel capacity necessary to serve those potential customers, Ronald knew that DLB required additional T-band frequencies to allow for private conversations and that no such suitable facilities in the 450, 800 or 900 MHz bands were available (Tr. 104). Patricia agreed that DLB needed more spectrum (Tr. 778-79).

5. Ronald was told by Scott Fennell of the Personal Communications Industry Association, Ltd. ("PCIA"), the frequency coordinator, that the FCC limited the number of channels DLB could immediately obtain in its own name, his name or Patricia's name (EB Ex. 17, pp. 2-3; Tr. 290-91, 585). Similarly, Ronald was advised by John Black of Spectrum License Consultants, Inc. ("Spectrum") that there was a PCIA/FCC limit of one new T-band station per entity or individual until the channel authorized had been constructed and fully loaded (Tr. 285-

86, 290-91, 586, 1635-36).² Patricia also understood that this limit existed with respect to the number of licenses that any one entity could obtain at a time (Tr. 779). John Black helped Ronald research available frequencies in the 470-512 MHz range (Tr. 104, 107-11). When they identified several channels available for exclusive assignment in the Allen, Texas/northern Dallas metropolitan area in which DLB operated, Ronald sent a list of names and addresses of the prospective applicants to John Black and asked him to prepare applications in those names for new T-band licenses (EB Ex 19, p. 229, EB Ex. 66; Tr. 108-09, 126, 432-33, 573, 1218-29, 1632-33).

6 The list of applicants that Ronald sent to John Black included the following names: O C Brasher, Ruth Bearden, Jim Sumpter, Norma Sumpter, Jennifer Hill, Melissa Sumpter and Carolyn Lutz (EB Ex 66; Tr 115-117, 432-33). John Black prepared the applications and returned them to Ronald (Tr 413). After the applications had been signed, Patricia drafted a check for the filing fee for each application (EB Exs. 3, 9, 35, 41, 49, 54 and 57, Tr. 172, 784-86, 793-99, 874) In June 1996, Ronald submitted the applications to PCIA, the frequency coordinator, which coordinated the applications and then sent them to the Commission (Tr 184, 421-22, 1661-62) The Commission granted the applications for O C , Ruth, Jim, Norma, Jennifer and Carolyn in September 1996 and granted Melissa's application in October 1996 (Ronald/Patricia Ex. 3, Tr 281; EB Ex 10, pp 1-2, EB Ex. 37, p. 33; EB Ex. 45, p. 14; EB Ex. 55, p. 18; EB Ex. 58; Tr 181-82, 209, 1170-71).

7. O C. Brasher ("O.C.") is the name of Ronald's deceased father (EB Ex. 19, pp 1-2; FB Ex 21, pp. 1-2, EB Ex 37, p. 6) O.C. passed away on August 17, 1995 (EB Ex. 6). Ruth I.

² John Black understood the PCIA's policy to be consistent with the Commission limit imposed by 47 C.F.R. § 90.313 (Tr. 1640-44).

Bearden (“Ruth”) was the maiden name of Ronald’s deceased mother (Tr 172; EB Ex. 21, pp. 1, 3, EB Ex 37, p 6) Ruth died April 22, 1991 (EB Ex 12) Norma Sumpter (“Norma”) is Patricia’s sister (Tr 51, EB Ex. 19, p. 2) Jim Sumpter (“Jim”) is Norma’s husband and DLB’s former accountant (Tr. 51, 1738-39, EB Ex 19, p. 2, EB Ex. 37, p 5) Jennifer Sumpter Hill (“Jennifer”) and Melissa Sumpter Ellington (“Melissa”) are Norma and Jim Sumpter’s daughters, Patricia and Ronald’s nieces (Tr. 94-96: 1986; EB Ex. 19, p. 2, EB Ex 37, p. 1; EB Ex. 52, pp. 1, 4, EB Ex 55, pp 1. 5) Carolyn Susan Lutz (“Carolyn”) is another sister of Patricia and Norma. Carolyn was DLB’s office manager (Tr. 1132-33, 1137; EB Ex. 19, p. 2).

8 The Sumpters did not sign their respective license applications and did not intend to have licenses (Tr 1942-43, EB Ex 37, p 3; Tr 2011-12, 2029; EB Ex 45, p. 3; Tr. 1318019, 1321, EB Ex. 52, p 3, Tr 1050, 1076-77, EB Ex. 55, p. 4). The Sumpters were not consulted regarding the location of “their” stations and did not know when, where, how or if “their” stations had been constructed (Tr 1065-68; 1344-45; 1784-89; 2099, 2101). The Sumpters did not pay any of the costs related to “their” stations, nor did they discuss such expenses with anyone (Tr 170, 817, 1065-68, 1348-50, 1784-89, 2101-04). Instead, DLB paid the costs associated with the licensing, construction and operation of the stations (Tr. 292, 446-47, 817). DLB personnel loaded customers on the stations and billed the customers (Tr. 162-68, 871-72; EB Ex 17, p 6) The revenues received from operation of the stations were deposited into the DLB account (Tr 155). DLB did not compensate the Sumpters in any manner for the use of “their” licenses (Tr 170, 1065-68, 1097, 1345, 1791-94, 2102).

9 In November 1997, after a competitor had filed a petition challenging the legality of

DLB's acquisition of the aforementioned authorizations,³ an Opposition was filed with the Commission by counsel on behalf of, *inter alia*, DLB, Ronald, Patricia, the Sumpters, Carolyn, O C and Ruth (EB Ex 2). Ronald certified that the statements in the Opposition were true (*Id*, p 7). Among other things, the Opposition represents "There are family relationships among the Brashers and the Sumpters, but *nothing prevents each of them from holding one or more licenses for private carrier or commercial mobile radio service stations*" (Emphasis added) (EB Ex 2, p 3). Later, on the same page, the "Opposition" asserts. "Each of the operators retains control of its own station(s) " (*Id.*). The Opposition denied any wrongdoing (*Id.*). The Opposition also reported that the stations were managed by Ronald but claimed that each of the licensees retained control of his or her respective stations (*Id.*).

10 On November 8, 1998, the Commission sent a letter of inquiry (the "November 1998 LOI") to DLB (EB Ex 16). By letter dated December 4, 1998, counsel submitted a response on behalf of DLB and Ronald, which Ronald verified (the "December 1998 Letter") (EB Ex 17). Among other things, the December 1998 Letter represented that each licensee was informed of the date of construction of each of its licensed facilities, each licensee is permitted to use the entire commonly managed system without limit, and each licensee retained its right to sell, transfer, remove from management, or cancel its license at any time (*Id.*, pp. 2-3). The December 1998 Letter also represented that Ronald had made reports concerning station operations and that most of the licensees had reviewed these reports and gave him directions for

³ On November 17, 1997, that competitor, Net Wave Communications, Inc ("Net Wave"), filed a "Petition for Order to Show Cause" with the Commission (the "Net Wave Petition") (EB Ex 1). Generally, the Net Wave Petition accused the Brashers of having made misrepresentations in the applications for T-band licenses with respect to the real parties-in-interest (*Id*, p 2).

improvement or correction of problems. The December 1998 Letter further claimed that each applicant had been responsible for reviewing and signing his or her own application (*Id.*, p. 5).

11 When the Commission sent additional letters of inquiry to DLB, Ronald, Patricia and David⁴ in March 1999 (collectively, the “March 1999 LOI”) (EB Exs. 18, 23, 27 and 30), they jointly responded, through counsel, by letter dated April 5, 1999, supported by Ronald’s verification (the “April 1999 Response”) (EB Ex. 19). Among other things, the April 1999 Response asserted that each of the prospective licensees was chosen by the Brashers because each had agreed to accept the duties of a Commission licensee, was willing to participate in the funding of the construction of his or her station, and was willing to actively assist in the sales of service and equipment to be provided to the customers of his or her station (*Id.*, pp. 3-4) The April 1999 Response also made various claims regarding the Sumpters and Carolyn, it did not disclose that both O C. and Ruth were dead when their respective applications had been signed and filed with the Commission (*Id.*) Jim, however, also responded to the Commission, informing that O C. and Ruth had passed away (EB Ex. 37, pp. 5-6).

12. Attached to the April 1999 Response were copies of several Management Agreements, each of which indicated that it had been executed in March 1999. The Management Agreements each provided that the named licensee party thereto retained ultimate supervision and control of his or her respective station (EB Ex. 5, p. 11, Tr. 354-56, EB Ex. 19, pp. 000458, 000486, 000500, 000514, 000828, 000542, 000556, 000570, 000585) Although the page

⁴ David Brasher (“David”) is Patricia and Ronald’s son. David and his wife, Thelma Diane Brasher (“Diane”), are also officers of DLB (Tr. 52, 907-08, 1534, 1539). David has been a Vice President of DLB since the company’s inception and an employee since April 1997 (Tr. 52, 906-08, 941, 1535). Diane has been DLB’s corporate secretary since the company’s inception and a full-time employee since April 1984 (Tr. 1538-39)

bearing O.C.'s "signature" was missing, Ronald testified at the hearing that it had been his intention to include O.C.'s signature page, on which Ronald had signed O.C.'s name (Tr. 355-56)

13 Ronald and Patricia testified at the hearing that they constructed the stations and never requested the Sumpters or Carolyn to pay any of the costs associated with their respective facilities (Tr. 127-28, 136-37, 292, 446-47, 643, 817, 872). As noted above, DLB personnel, and not the nominal licensees in the case of O.C., the Sumpters and Carolyn, solicited the customers that used the stations, and they serviced and billed those customers for those services. All of the money received for service over the stations was deposited into the DLB account. DLB made no cash payments to the Sumpters for the use of "their" licenses (Tr. 170, 456, 1345, 1791, 2102)

14 In light of this evidence, and after observing the demeanor of the witnesses at length, the Presiding Judge concluded in the I.D. that, although the Brashers were not credible witnesses, the Sumpters had each testified truthfully (I.D. ¶ 139). The Presiding Judge made very specific findings regarding the demeanor and credibility of the witnesses (I.D. ¶ 139-48). In so concluding, the Presiding Judge noted that other significant record evidence corroborated the Sumpters' version of events (I.D. ¶ 139-48).

II. ARGUMENT

A. Misrepresentation/Lack of Candor: Issue (a)

15 Contrary to the arguments contained in the various Exceptions filed by the Brashers, they repeatedly misrepresented facts to and lacked candor with the Commission. The Brashers' deception first surfaced in the 1996 applications filed in the names of deceased, unknowing or unwitting relatives, and continued through the hearing of this proceeding.

1. The Brashers intended to deceive the Commission in the 1996 applications.

16 The Brashers argue that the motivations behind their actions in connection with the 1996 application do not support a conclusion that they intended to deceive the Commission. In this regard, they suggest that they believed that they could file applications in the names of dead relatives and in the names of others who had no intention of ever fulfilling the responsibilities of a Commission licensee.⁵ This argument is unsupportable and without merit.

17 The Brashers' argument that they did not intend to deceive the Commission by filing applications in the names of O C and Ruth is ludicrous. Both "applicants" had passed away well before they purportedly signed the applications and the applications were filed in their names. As the I D sets forth at ¶¶ 112-13, both Ronald and Patricia knew that an applicant had to be alive and that the applicant named in the application had to be the person who executed the application. By signing applications in the names of his dead father and mother, Ronald knew that he was falsely representing to the Commission both the applicants' real identities and their abilities to function as licensees. Likewise, by signing checks in payment of the filing fees for the applications, which checks noted that they were for applications in the names of Ronald's dead parents, Patricia "was complicit in the misrepresentations." (*Id*) The Brashers can point to nothing in the record that supports their after-the-fact rationalization that either Ronald or Patricia received advice to the effect that the Commission would accept applications from the dead. In short, there is no evidence that either had a good faith belief that an application of a dead person would be acceptable to the Commission.

18 Similarly, when they submitted applications in the names of the Sumpters, Ronald

⁵ See Ronald's Exceptions at pp 8-16.

and Patricia knew that the named applicants had neither authorized the filing of the applications nor had any intention of acting as licensees. Further, although Carolyn had apparently authorized her application and had signed it, she did so only as a favor to Ronald (Tr. 1162-63, 1165, 1194). Thus, the Sumpters were used merely to seek licenses which the Brashers knew could not otherwise have been acquired because of the restrictions imposed by Section 90.313 of the Commission's rules. Accordingly, the Brashers' use of those individuals' names as *bona fide* applicants was deceitful. The Brashers' speculation that they might have been able to obtain a waiver of the rule or otherwise been able to acquire the licenses legitimately through some other approach⁶ does not excuse the inescapable fact that they engaged in this fraud on the Commission.

19 More particularly, the Commission should reject the claim that the Brashers' use of the Sumpters' names was with those applicants' knowledge and consent.⁷ The record reflects that there is an irreconcilable conflict between the testimony of the Brashers and the Sumpters as to whether the latter agreed to let their names be used and whether they signed the various documents to the Commission. The Brashers insist that the Sumpters signed their respective applications after a series of meetings during which the Brashers supposedly discussed with the Sumpters whether they would be interested in obtaining licenses.⁸ The Brashers also insist that Norma, Melissa and Jennifer signed "client copies"⁹ of the filings. However, the Sumpters vigorously denied signing their applications and the Sumpter women deny signing, or believe they did not sign, their client copies (Tr. 1942-43; EB Ex. 37, p. 3; Tr. 2011-12, 2029, 2030-31,

⁶ See DLB Exceptions, pp 8-16.

⁷ See Patricia Exceptions, pp 2-21.

⁸ *Id.*

⁹ *Id.*

EB Ex. 45, p. 3, Tr. 1318-19, 1321, 1333, EB Ex. 52, p. 3; Tr. 1050, 1069-70, 1073, 1076-77; EB Ex. 55, p. 4) The Presiding Judge resolved all of these testimonial conflicts in favor of the Sumpters, after observing the hearing testimony and finding their testimony, but not that of the Brashers, credible (I.D. ¶¶ 139, 148).

20 Where, as here, the Presiding Judge's credibility determinations are based on specific findings relating to the demeanor of the witnesses, such determinations are to be afforded great weight. *Gulf Coast Communications, Inc.*, 81 FCC 2d 499, 506 (Rev. Bd. 1979), *recon. denied*, 88 FCC 2d 1033 (Rev. Bd. 1981), *review denied*, FCC 82-128 (Apr. 16, 1982) "Deference is generally given to an ALJ's demeanor findings because he has a superior opportunity to observe and evaluate a witness, 'including the expression of his countenance, how he sits or stands, [and] whether he is inordinately nervous.'" *Telestar Inc.*, 2 FCC Rcd 5, 12 (Rev. Bd. 1987), *quoting in part. Penasquitos Village, Inc. v NLRB*, 565 F.2d 1074, 1078 (9th Cir. 1977).

21 In the I.D., the Presiding Judge made specific determinations that the Sumpters' demeanor throughout a grueling cross examination by the Brashers' counsel evidenced their credibility. The Presiding Judge concluded that the Sumpters "handled themselves exceedingly well in a highly charged and stressful situation, and their testimony was forthright, candid, and highly believable" (I.D. ¶ 148). Additionally, the I.D. correctly concluded that the Sumpters' testimony was supported by other record evidence.¹⁰ In contrast, the Presiding Judge noted that, in their testimony, the Brashers related fundamentally different stories about the events

¹⁰ See, e.g., the opinion of the handwriting expert that the signatures appearing on the original applications were not those of the Sumpters (I.D. ¶¶ 32, 42); that Norma and Jim were out of town when they purportedly signed client copies of the applications (I.D. ¶¶ 95-96); and that the dates on the client copies of the applications were "machine copies of a single handwritten entry" and thus, probably tampered with) (I.D. ¶¶ 99, 146)

preceding the applications' signings (I.D. ¶¶ 140-41) and that they had repeatedly misrepresented facts in responding to Commission inquiries, most tellingly, in conjunction with the various Management Agreements, which can only be interpreted as an ill-conceived attempt to convince the Commission that the deceased O C , and Carolyn and the Sumpters were each independently acting as responsible Commission licensees (I D. ¶¶ 25-27, 87, 129-36). Thus, when faced with testimonial conflicts between the Sumpters and the Brashers, the Presiding Judge appropriately found the Sumpters, but not the Brashers, credible. In light of the record evidence and the Presiding Judge's well-founded analysis of it, the Brashers have failed to demonstrate that the credibility findings of the Presiding Judge should be overruled. ¹¹

2. The Presiding Judge did not improperly "ignore" the *pro se* status of the Brashers.

22 The Brashers also assert in Ronald's Exceptions that the Presiding Judge erroneously ignored their *pro se* status in connection with the preparation and filing of the 1996 applications ¹² The Brashers also would have the Commission believe that, when they were acting *pro se*, they had a good faith belief that they were in compliance with the Commission's rules, and therefore did not have the requisite intent to deceive the Commission ¹³

23 There is simply no record support for these arguments The Brashers' *pro se* status during the period when they prepared and submitted the applications on behalf of their dead

¹¹ See *In re Applications of Ronald E Patterson, et al* , 8 FCC Rcd. 1726, 1736 (Rev. Bd 1993) (“[A]s a general matter the Commission gives deference to the credibility findings of its administrative law judges unless the findings are patently in conflict with the record evidence. See *Naguabo Broadcasting Company*, 6 FCC Rcd 912, 919 (Rev. Bd.1991). The ALJ is in a position to observe the witness' demeanor and evaluate his credibility, as the ALJ did here. The Board is responsible to look behind such findings to assure substantial record evidence in support, see generally 5 U.S.C. § 706(2)(E), and will reverse if solid record support is not present.”)

¹² Ronald Exceptions, p. 3.

¹³ *Id* , pp 3-5

relatives and others who never had any intention of assuming the duties of a licensee does not excuse their misconduct in doing so. All applicants are required to abide by the Commission's rules regardless of the state of their legal representation. *See generally, Royce International Broadcasting Company v. FCC*, 820 F.2d 1332, 1337 (D.C. Cir. 1987) ("Applicants who proceed *pro se* are not thereby exempt from compliance with FCC rules and orders"), *Mandeville Broadcasting Corp.*, 2 FCC Rcd 2523 (1987). Moreover, assuming, *arguendo*, that the Brashers somehow believed that their actions and representations to the Commission in the applications were permissible (which we have demonstrated was not the case), such a state of affairs would not minimize the gravity of the falsehoods in which they subsequently engaged, when the Brashers responded to the Net Wave Petition, to the December 1998 LOI and the March 1999 LOI, and to questions put to them at the hearing. As demonstrated in the Counterstatement, *supra*, many of the Brashers' most egregious misrepresentations occurred while they were represented by counsel. Their continued willingness to prevaricate reveals that their *pro se* argument is yet another groundless attempt to excuse their misconduct.

24 In any event, the Presiding Judge was certainly aware of the Brashers' degree of sophistication. The I.D. at ¶¶ 11-13 correctly observed that the Brashers respectively serve as President and Vice President of DLB, a company that, in 2000, had estimated gross revenues of between \$2,000,000 and \$2,400,000; and that DLB employed 15 or 16 people, managed 20 stations and controlled 2,500 mobile units (I.D. ¶¶ 11, 13). Moreover, at the time that the Brashers determined that they required additional spectrum for their business, they consulted with two individuals, Scott Fennell and John Black, before they filed applications on behalf of dead relatives and others who were, at best, nominal applicants specified for the convenience of

DLB¹⁴ Following Commission grant of the applications, the Brashers attempted to convince the Commission that the stations were being controlled by their nominal licensees and in accordance with the Commission's rules, continuing to make such deceptive statements after they were represented by counsel. These are hardly the actions of unsophisticated rubes. The record evidence shows that, at all times, the Brashers were well aware of what they were doing. The argument that the Commission should excuse them for their serial violations of the Commission's rules and policies because their problems arose out of actions taken before they were represented by counsel should be rejected.

3. The Brashers misrepresented facts in their Opposition to the Net Wave Petition.

25 The Brashers' claim that they did not misrepresent facts in their Opposition to the Net Wave Petition is belied by the content of the Opposition.¹⁵ The record clearly shows that the Opposition contains the following misrepresentations. 1) the attorneys were representing Ruth and O C in 1997, 2) no rule prohibits the deceased Ruth and O C from holding licenses; 3) each of the licensees (including Ruth) submitted applications in their true names, and 4) Ruth, O.C., the Sumpters, and Carolyn each retained control of their licenses (EB Ex 2; *see also* ID. ¶¶ 53-56, 120, and 138). The accuracy of the representations made in the Opposition was attested to by Ronald (EB Ex 2, p 7). At the time that he did so, Ronald knew that the attorneys were not representing Ruth and O.C.: that Ruth and O.C. could not hold licenses in their own names; that Ruth, O C and the Sumpters had not signed their applications, and that the long-since deceased Ruth and O C, as well as the Sumpters and Carolyn, had no control whatsoever over "their" respective stations. Ronald knew that his assertions were to be submitted to the Commission,

¹⁴ *See, supra* at ¶ 5

¹⁵ DLB Exceptions, pp. 3-4

and that they were for the purpose of convincing the Commission to deny the Net Wave Petition. The assertions were false. Ronald knew they were false, and he had a motive for making them. He lied, repeatedly and consistently, to this agency.

4. During the Commission's investigation and at the hearing, the Brashers repeatedly misrepresented facts concerning the Sumpters' applications and licenses.

26 The Brashers assert that any conclusion that they misrepresented facts with respect to the investigation of the Sumpters depends upon finding the Sumpters' testimony credible, and that of the Brashers unbelievable.¹⁶ The Bureau submits that the Brashers' testimony was not credible, regardless of any consideration of the merits of the Sumpters' testimony. For example, in the April 1999 Letter to the Commission, the Brashers represented that the Sumpters had agreed to fund construction of the Sumpters' stations, risk monies, and participate in sales of service on their respective stations. They represented that the Sumpters were actively supervising the management of their stations, and that they received regular reports of sales and revenue with respect to their individual stations from DLB (EB Ex. 19, pp 1-12). At the hearing, however, the Brashers admitted that all of these statements are false (I.D. ¶¶ 44, 46, 47, and 49). Indeed, DLB's bookkeeper and its outside accountant confirmed that DLB does not maintain records that would permit it to report sales and/or revenue to licensees on a per station basis (Tr 1514, 1572-73, 1577-78). Clearly, the Presiding Judge gave the appropriate weight – little or none – to the Brashers' testimony (I.D. ¶ 111).

¹⁶ *Id.*, pp. 4-5.

5. The I.D. correctly concluded that the Brashers lacked candor in their participation in the Bureau's investigation and in their hearing testimony.

27 Contrary to the Brashers' assertions,¹⁷ there is ample record evidence that the Brashers lacked candor with the Commission during its investigation, and during the subject hearing. Had they answered the Commission's inquiries "fully and completely," as they now maintain to have done,¹⁸ they would have revealed at the outset that Ruth and O.C. were deceased when the applications ostensibly bearing their signatures were filed in each of their names. Instead, they answered Commission inquiries as though Ruth and O.C. were still alive, and Ronald continued to sign O.C.'s name to other applications and documents also submitted to the Commission, perpetuating the lie that O.C. was alive and a responsible, independent applicant and licensee.

28 Ronald argues that "[L]ack of candor is grounded in a party's withholding of material facts."¹⁹ He also asserts that his having provided substantive answers to the vast majority of the questions put to him during the hearing is inconsistent with a finding that he lacked candor.²⁰ We disagree.

29 The Presiding Judge properly found that Ronald had failed to provide critical information to the Commission during the investigation, including the fact that Ruth and O.C. were deceased (I.D. ¶ 121). Likewise, as discussed above, the Presiding Judge also appropriately concluded that Ronald had testified falsely in claiming that he and Patricia had had a series of meetings with the Sumpters before their 1996 applications were signed and submitted (I.D. ¶¶

¹⁷ DLB Exceptions, p. 7.

¹⁸ *Id.*, pp. 7-8.

¹⁹ Ronald Exceptions, p. 9, quoting *Allreg Cellular Engineering*, 12 FCC Rcd 8148, 8175 (1997).

²⁰ DLB Exceptions, p. 8.

140-41) The record similarly supports his finding that Patricia lacked candor with the Commission (*Id.*, *see also* *Id.*, ¶ 113). Among other things, as discussed *supra*, she directly participated in the filing of the applications and other documents in the names of Ruth and O.C. by signing the checks that accompanied the applications.

30 The Brashers also lacked candor in responding on behalf of DLB to Commission inquiries and in its other filings. In its Opposition to the Net Wave Petition, DLB reported that it was managing stations for Ronald, Patricia, David, O.C., Ruth, the Sumpters and Carolyn (EB Ex. 2). The Opposition asserted that “Each of the Operators retains control of its own station(s)” (*Id.*, p. 7). Ronald attested to the accuracy of the response (*Id.*). Dismissive of Net Wave’s allegations, DLB stated, “In sum, Net Wave has shown nothing of any significance that the Commission could not have found by its routine processing of the Operator’s applications” (*Id.*, p. 6). In fact, as a result of this continuing deception by the Brashers and DLB, the Commission’s records would not have revealed that both O.C. and Ruth were dead or that the Sumpters were until then unaware of their applications and licenses until Jim responded to a Commission letter of inquiry in April 1999.²¹

31 As discussed *supra*, the Commission had sent a letter of inquiry in November 1998, seeking details regarding the managed stations (EB Ex. 16, pp. 1-2). Again, Ronald submitted DLB’s response. He admitted filing applications on behalf of O.C., Ruth, the Sumpters, David Brasher, D.L. Brasher and Carolyn (EB Ex. 66; Tr. 115-117, 432-33). However, he significantly failed to inform the Commission that both Ruth and O.C. were not alive when their applications were submitted to the Commission or provide the Commission with his subsequently-offered

²¹ *See supra*, ¶ 11

contention that he was managing O.C.'s station as the executor or administrator of O.C.'s estate. The only explanation for his omissions is that Ronald's responses were intended to conceal Ruth's and O.C.'s pre-application deaths from the Commission.

32 When asked in the November 1998 LOI who was responsible for reviewing and signing each of the applications challenged by the Net Wave Petition (EB Ex. 16, pp. 1-2 (see particularly question 2(d))), Ronald responded that each licensee of a managed station was responsible for reviewing and signing his or her own application (EB Ex. 17, p. 5). In the March 1999 LOI, DLB was asked to identify any licensee who did not review station operation reports and/or give directions to Ronald for improvement or correction of problems (EB Ex. 18, p. 3). Ronald responded that all of the managed station licensees, except the Sumpters, gave him substantial directions and supervision regarding the operation of their respective stations (EB Ex. 19 at Bates No. 000005).²² The only reasonable inference that one can draw from that response is that O.C. was alive and personally and actively supervising the operation of his station. Similarly, in DLB's response to an inquiry regarding the relationships between DLB officers and the licensees of managed stations (the April 1999 Response), Ronald, again, failed to mention that O.C. was deceased (EB Ex. 19, Bates No. 000001-02).

33 Patricia was also aware that O.C. and Ruth were no longer alive when their applications were submitted to the Commission (Tr. 804, 874-75; EB Ex. 21, 29). She admitted that O.C. did not sign the Management Agreement between himself and DLB, but that she did execute it on behalf of DLB as its representative (Tr. 858-860, EB Ex. 5, 28). Patricia approved

²² Ronald had previously reported in the Opposition that Ruth Bearden's station, WPJR762, was not in service (EB Ex. 2, p. 2). On March 31, 1998, Ruth's license had been cancelled by the Commission because no one reported whether the station had been constructed (EB Ex. 10, p. 2). Consequently, the December 1998 Letter did not include a reference to Ruth's station.

DLB's responses to the November 1998 LOI (EB Ex. 17) and the March 1999 LOI (EB Ex. 19) even though each contained responses to the Commission's inquiries, which she had to know were false. Additionally, she helped prepare the response to the Commission's September 9, 1999 LOI (EB Ex. 21) and the Bureau's Request for Admissions (EB Ex. 28) (Tr 850-853, 855-858, EB Ex 29). Despite having written checks in payment of the application fees for O.C.'s and Ruth's applications, in her response to the September 9, 1999 LOI, Patricia denied providing any assistance or supervision in the preparation or filing of O.C.'s or Ruth's applications (EB Ex. 21, pp 1, 3, 5, 10, 15, 19, 25, 59, EB Ex 23). These matters, considered in conjunction with her misleading testimony regarding the Sumpters' applications, provide ample evidence that she also lacked candor with the Commission.

B. Real Party-in-Interest/Unauthorized Transfer of Control/Abuse of Process: Issues (b) and (c).

34 Contrary to the DLB's assertions,²³ and consistent with the findings of the Presiding Judge, the unauthorized transfers of control, real party-in-interest, and abuse of process designated issues are inextricably intertwined and should be considered together. In light of the overwhelming record evidence that the Brashers were the real parties-in-interest of each of the applications of the Sumpters, Carolyn, O C and Ruth, and of the licenses granted to each of them, separate consideration of these issues will not "save" the Brashers and DLB from disqualification.

1. The I.D. correctly concluded that the Brashers had engaged in abuse of the Commission's processes.

35 DLB maintains that the Commission must find that the Brashers had a specific intent

²³ DLB Exceptions, p. 9

to abuse those processes “to achieve a result to which the defendant would not otherwise be entitled” in order to find an abuse of process in this case²⁴ DLB argues that, since the Brashers followed the advice of Scott Fennel of PCIA and of John Black, they “did not evince an abusive intent in their preparation of the subject applications.”²⁵

36. In making these assertions, DLB conveniently fails to note that, when they so assisted the Brashers, neither Mr. Black nor Mr. Fennel knew that O.C. and Ruth were dead, that the Sumpters had not given permission to the Brashers to use their names on applications, and that Carolyn had no intention of assuming the duties of a licensee. In fact, Mr. Black testified that he assumed that the signature on each application’s certification was that of the applicant. He said that he would not have submitted an application not signed by the applicant and would not have advised anyone to submit such an application (Tr. 1732). Indeed, Mr. Black testified that, as does the Commission in processing applications, he assumes that the named applicant is the applicant in fact and that the applicant’s signature is authentic. He further testified, “If we don’t make that assumption, then we indeed do destroy the integrity of the whole process” (Tr. 1707). Contrary to Ronald’s assertions, Mr. Black also testified that he had never advised Ronald regarding the regulatory requirements for managed stations (Tr. 1731-33).

37 DLB further argues that the Brashers could have acquired the additional spectrum they needed if they had received advice from competent communications counsel regarding other ways of obtaining that spectrum²⁶ Such speculation is irrelevant. It is uncontroverted that the Brashers knew that they were ineligible to apply for additional spectrum in their own names. In

²⁴ *Id.*, p. 10, n. 3

²⁵ *Id.*

²⁶ *Id.*, pp. 12-13

order to circumvent this rule, they conspired to intentionally deceive the Commission. They filed applications in the names of deceased and uninformed family members. When the applications were filed in June of 1996, the Brashers intended to control the resulting licenses and to use them solely for their own purposes. When licenses were issued as a result of those applications, the Brashers so used them. The named licensees did not know about these licenses and did not exert control over them. It was only after being served with the Net Wave Petition in November 1997 that the Sumpters became aware that they held licenses. DLB's contention that the Commission cannot find an abuse of process under the circumstances presented in this case²⁷ is unsupported by the evidence and the law.

38 DLB also argues that Ronald, as the executor of his father's estate, was entitled to file an application on behalf of O.C.²⁸ However, Ronald did not file an application as the executor of O.C.'s or Ruth's estate, much less sign the applications in his own name and disclose his status. Instead, both applications appeared to be filed in the individual names of O.C. and Ruth, as if they were alive (EB Ex. 3, p. 4; EB Ex. 9, p. 4).

39 In 1996, Section 1.913 of the Commission's rules²⁹ stated, in pertinent part, that "applications, amendments thereto, and related statements of fact required by the Commission must be signed by the applicant, if the applicant is an individual." "Signed," as used therein, means "an original hand-written signature." Thus, Ruth and O.C. were required to sign an application submitted in their names. Obviously, they did not do so; Ronald did and did so improperly.

²⁷ *Id.*, p. 16.

²⁸ *Id.*, pp. 14-15.

²⁹ 47 C.F.R. § 1.913 (1996). The substance of that section has since been reassigned to Section 1.917 of the Commission's rules, 47 C.F.R. § 1.917

40 In 1996, Section 1.914 of the Commission's rules³⁰ required "full and complete disclosures with regard to the real party or parties in interest and as to all matters and things required to be disclosed by the application forms." The Brashers were the undisclosed real parties-in-interest of O.C.'s, Ruth's and the Sumpters' license applications. Consequently, the Brashers also violated this rule when they filed those applications.

41 Ronald also argues that, as executor of O.C.'s estate and pursuant to Section 1.948(g) of the Commission's rules,³¹ he would be legally qualified to succeed to O.C.'s interest in any Commission authorization.³² However, such qualification is only applicable in case of the death or legal disability of a licensee or permittee, not where, as here, an applicant has died before the application was filed. Moreover, within 30 days of such death or the onset of such legal disability, an application must be filed with the Commission involuntarily assigning or voluntarily transferring the license or permit out of the dead or injured licensee's or permittee's name.³³ Here, because the deaths of Ruth and O.C. had occurred before any authorizations had been issued, Ronald had no rights as an executor to obtain the Commission authorizations sought in the applications filed in the names of Ruth and O.C. Of course, Ronald filed no such application, instead, he continued to operate the station licensed to his long-since dead father.

2. The I.D. correctly concluded that unauthorized transfers of control or violations of the real party-in-interest rules had occurred.

42. The record in this case contains ample evidence that the Brashers were the real

³⁰ 47 C.F.R. § 1.914(1996)

³¹ 47 C.F.R. § 1.948(g).

³² DLB Exceptions, p. 14.

³³ 47 C.F.R. § 1.948(g). *See also* former 47 C.F.R. § 1.924(c)(2) (1996).

parties-in-interest behind the applications submitted in the names of the Sumpters, Ruth, O.C. and Carolyn. That evidence also clearly shows that the Brashers orchestrated the licensing of those applicants and controlled the use of their resultant licenses.

43. The Brashers present no evidence to support their allegation that the Presiding Judge did not fully consider the relationships between the family members when he ruled on the unauthorized transfer of control and real party-in-interest issues.³⁴ Exhaustive testimony was given during the hearing regarding the relationships between the parties. The Brashers presented and elicited testimony on this subject. The Presiding Judge also questioned witnesses about their family interactions and relationships. The I.D. appropriately and fully discusses these family relationships and interactions (I.D. ¶ 19). Consequently, the Brashers have no basis for their claim that the Presiding Judge failed to consider the status of the parties when making his determination.

45. The Brashers argue that the Presiding Judge must not strictly interpret the indicia of control enumerated in *Intermountain Microwave*, 24 RR 964, 983 (1963) (“*Intermountain*”) when making a determination in this case because of the family relationships between the parties.³⁵ However, they fail to offer any authority for their contention that the *Intermountain* indicia of control do not apply between family members or that any precedent authorizes the exemption of family members from retaining control of licenses issued in their names. The evidence overwhelmingly supports the conclusion of the Presiding Judge that O.C. and the Sumpters did not control the stations licensed in their names and his determination that the

³⁴ D.L.B. Exceptions, p. 16.

³⁵ *Id.*, p. 18.

Brashers took unauthorized control of their stations is clearly warranted in this case (I.D. ¶¶ 42, 166).

46 Although DLB argues that the Sumpters, Carolyn and the estate of O.C. each benefited from DLB's use of his or her license, in reality, the Brashers, not the licensees themselves, reaped the benefits derived from DLB's operation of their stations³⁶ Ronald's "noble gesture" in choosing these family members to be licensees is seen more objectively as a particularly distasteful breach of good faith and a violation of the duty the Brashers owed to their other family members and to the Commission. By improperly using their relatives' names in applications, the Brashers' actions shattered the "family unit" that they now claim to cherish.

47 The Brashers argue that the Presiding Judge erroneously concluded that the Brashers were managing the stations only for themselves. In support of this contention, they maintain that Ronald turned off both Norma's and Melissa's stations in February 1997, after Norma's request that he do so was relayed to him by Carolyn (Tr. 560). However, Carolyn denies relaying any such message to Ronald (Tr. 1137), and Norma denies knowing that she had a license in her name until after receipt of the Net Wave Petition (Tr. 2029). Consistent with the many other half-truths and false statements sworn to by the Ronald, his testimony regarding this matter is simply without factual basis. Although the Brashers argue that there was insufficient evidence presented to support a finding that they intended to deceive the Commission, the record contains

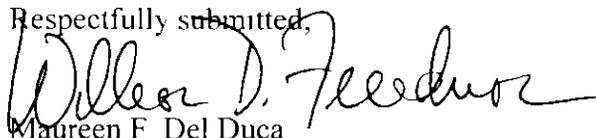
³⁶ In Ronald's Exceptions at p. 22, he argues that DLB was Jim Sumpter's largest customer for years. There was no evidence presented to sustain that conclusion. Similarly, Ronald's claim that "Jim Sumpter made all decisions regarding the finances of the business" is contradicted by the testimony (Tr. 754, 772-73, 814-15, 1739).

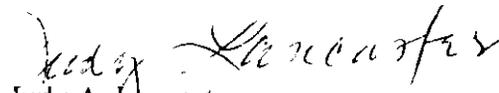
overwhelming evidence of such an intent

III. CONCLUSION

49 Contrary to the Brashers' assertions, the evidence and applicable legal standards demand their disqualification and that of DLB and the revocation of their licenses. They lied repeatedly to this Commission about matters of significance, they abused the Commission's processes, they were undisclosed real parties-in-interest, and they controlled licenses issued in the names of others. They have demonstrated beyond doubt that they cannot be trusted as Commission licensees. Accordingly, the Bureau requests that the Commission affirm the I.D

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Judy Lancaster, an attorney for the Investigations and Hearings Division, Enforcement Bureau, certify that I have, on this 2nd day of October, 2003, sent, by U.S. mail, copies of the foregoing "Enforcement Bureau's Exceptions and Brief" to:

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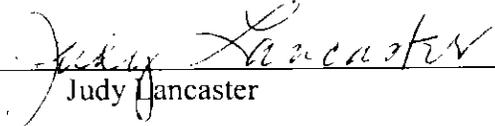
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