

DOCKET FILE COPY ORIGINAL Before the Federal Communications Commission Washington, D.C. 20554

SEP 7 1 11 PM '04

In the Matter of)
Ronald Brasher)
Licensee of Private Land Mobile Stations)
WPLQ202, KCG967, WPLD495, WPKH771,)
WPKI739, WPKI733, WPKI707, WIL990,)
WPLQ475, WPLY658, WPKY903, WPKY901,)
WPLZ533, WPKI762, and WPDU262)
Dallas/Fort Worth, Texas)
Patricia Brasher)
Licensee of Private Land Mobile Stations)
WPJI362, 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 WPJR761)
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)
WNAH223)

EB Docket No. 00-156

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. D113240
Stations from Ronald Brasher (WPKI707,)	
WPKI739, WPKI733 and WPLQ475), Norma)	
Sumpter (WPJR739), D.L. Brasher (WPJR750),)	
David Brasher (WPJR757), Jim Sumpter)	
(WPJR725), Jennifer Hill (WPJR740),)	
Metroplex Two-Way Radio Service (WPJR754),)	
O.C. Brasher (WPJR761), Melissa Sumpter)	
(WPJS437) Dallas, Texas)	
)	
Applicant for Assignment of Private Land Mobile)	File No. D113242
Station)	
)	
Applicant for Modification of Private Land Mobile)	File No. D113241
Stations WPKM796, and WPKL830, and)	
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)	

APPEARANCES

Robert H. Schwaninger, Jr., Benjamin J. Aron, and Garret R. Hargrave on behalf of DLB Enterprises, Inc., Ronald Brasher, and Patricia Brasher; and Maureen F. Del Duca, Judy Lancaster, and William H. Knowles-Kellett, on behalf of the Enforcement Bureau, Federal Communications Commission.

DECISION

Adopted: September 1, 2004

Released: September 7, 2004

By the Commission:

TABLE OF CONTENTS

	Paragraph
I. Background	2
II. Initial Decision	
Findings of Fact – Factual Background	6
Findings of Fact – Participation of the Nominal Applicants in Their Applications and Facilities	11
Findings of Fact – Responses to Net Wave Petition and Commission Inquiries	25
Conclusions of Law – Real Party-In-Interest, Unauthorized Transfer of Control, Abuse of Process	30
Conclusions of Law – Misrepresentation and Lack of Candor	34
Conclusions of Law – Ultimate Conclusion	37
III. Discussion	
Real Party-In-Interest, Unauthorized Transfer of Control	38
Abuse of Process	42
Misrepresentation and Lack of Candor – O.C. Brasher filing	45
Misrepresentation and Lack of Candor – Ruth I. Beardon filing	49
Misrepresentation and Lack of Candor – the Sumpters filing	51
Misrepresentation and Lack of Candor – Net Wave Opposition	62
Misrepresentation and Lack of Candor – Responses to Letters of Inquiry	65
Conclusion	75
IV. Ordering Clauses	77

1. In this decision, we affirm the Initial Decision of Administrative Law Judge Arthur I. Steinberg, which revoked, denied, or dismissed most of the above-captioned private land mobile radio licenses and applications of DLB Enterprises, Inc. d/b/a Metroplex Two-Way Radio Service (“DLB” or “Metroplex”) and its principals, Ronald Brasher, Patricia Brasher, and David L. Brasher (a.k.a. D.L. Brasher),¹ and a related license of O.C. Brasher.

¹ Ronald Brasher, 18 FCC Rcd 16707, 16709 n.1 (ALJ 2003) (ID).

I. BACKGROUND

2. As explained below, this proceeding arose from allegations that Metroplex and its principals, Ronald and Patricia Brasher, abused the Commission's processes by applying for land mobile radio licenses in the names of surrogates. These allegations raised questions as to whether Metroplex and its principals were the real parties-in-interest in applications filed in the names of some of the Brashers' relatives, including two who were deceased, and as to whether their motive in pursuing this course of action was to evade limitations imposed by the Commission's rules on the number of applications that they could file in their own names. The allegations raised further questions as to whether Metroplex and its principals made misrepresentations to and lacked candor before the Commission. Metroplex and its principals allegedly falsely represented to the Commission that the nominal applicants were the real parties-in-interest in the applications and that the nominal applicants actually exercised control over the licenses that resulted from their applications. Moreover, Metroplex and its principals allegedly concealed their own unauthorized control of the licenses as well as the true circumstances under which the applications were filed. If these allegations proved true, they would represent serious misconduct of the type that might, pursuant to the Commission's character policy, disqualify Metroplex and the Brashers from holding radio licenses.

3. On August 29, 2000, the Commission initiated this proceeding to determine whether the above-captioned license and applications should be revoked or denied. Ronald Brasher, 15 FCC Rcd 16326 (2000). The following issues were specified:

- (a) To determine whether any of the above-captioned licensees made misrepresentations to, and/or lacked candor before, the Commission in applications and/or responses to Commission inquiries;
- (b) To determine whether any of the above-captioned licensees were undisclosed real-parties-in-interest or willfully and/or repeatedly violated § 310(d) of the Communications Act of 1934, as amended, by engaging in unauthorized transfers of control involving their respective stations;
- (c) To determine whether any of the captioned parties abused the Commission's processes in connection with the filing of applications on behalf of O.C. Brasher, Ruth I. Bearden, Jim Sumpter, Norma Sumpter, Melissa Sumpter or Jennifer Hill;
- (d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the above-captioned licensees are basically qualified to be and/or remain Commission licensees;
- (e) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether any or all of the above-captioned licenses should be revoked;

(f) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether any or all of the above-captioned applications should be granted.

4. Judge Steinberg ("ALJ") issued his Initial Decision on August 8, 2003, revoking most of the above-captioned private land mobile radio licenses and denying or dismissing the above-captioned applications. Ronald Brasher, 18 FCC Rcd 16707 (ALJ 2003) (ID). The ALJ found that Ronald Brasher, Patricia Brasher, and Metroplex abused the Commission's processes, since they were the real parties-in-interest in applications they filed in the names of O.C. Brasher, Ruth I. Bearden, Jim Sumpter, Norma Sumpter, Jennifer Hill, and Melissa Sumpter.² The ALJ also found that Ronald, Patricia, and Metroplex violated 47 U.S.C. § 310(d) by assuming control of the licenses issued pursuant to those applications without Commission authorization. Moreover, the ALJ found that Ronald, Patricia, and Metroplex made misrepresentations to and lacked candor with the Commission in the applications, in a pleading, in responses to Commission inquiries, and at the hearing. Ronald, Patricia, and Metroplex filed exceptions on September 8, 2003³ and the Enforcement Bureau filed a reply on October 2, 2003.

5. We affirm the ALJ's Initial Decision in all material respects. We find that Ronald and Patricia Brasher and Metroplex abused the Commission's processes when they filed applications in the names of O.C. Brasher, the Sumpters, and Ruth Bearden, and that they exercised control over the resulting licenses without authorization. We further find that Ronald, Patricia, and Metroplex made misrepresentations and lacked candor in the applications and in responses to pleadings and inquiries. We conclude that this misconduct warrants revocation of the licenses and denial of the applications at issue. In the sections that follow, we set forth in greater detail the factual findings that underpin our and the ALJ's conclusions and our analysis of the arguments raised in the parties' exceptions.

II. INITIAL DECISION

Findings of Fact -- Factual Background.

6. Patricia and her husband Ronald formed Metroplex in 1982 to provide two-way radio service in the Dallas, Texas area. Patricia owns 60 percent of Metroplex's stock and Ronald owns the remaining 40 percent. Their son David and his wife Diane are officers of Metroplex. ID at 16711 ¶¶ 6-7, 13. Jim Sumpter, Patricia's brother-in-law, was Metroplex's accountant. ID at 16711 ¶ 9. Metroplex employs 15 or 16 people and had a gross revenue for the year 2000 of approximately \$2-\$2.4 million. ID at 16712 ¶ 11.

² Since several of the individuals in this proceeding share the same last names, we will follow the practice of the Initial Decision and refer to the parties by their first names. Thus, when we do not refer to the parties by their full names, we will refer to Ronald Brasher as "Ronald," Patricia Brasher as "Patricia," David L. Brasher as "David," Diane Brasher as "Diane," O.C. Brasher as "O.C.," Jim Sumpter as "Jim," Norma Sumpter as "Norma," Jennifer Sumpter Hill as "Jennifer," and Melissa Sumpter Ellington as "Melissa." Jim, Norma, Jennifer, and Melissa may be referred to collectively as the "Sumpters." To be consistent, we will refer to Carolyn Lutz as "Carolyn" and Ruth I. Bearden as "Ruth." See ID at 16709 n.1.

³ The Associate General Counsel denied the parties' request to file combined exceptions of 75 pages, three times the limit prescribed by the rules. Ronald Brasher, FCC 03I-02 (OGC Sept. 22, 2003).

7. **Filing of applications.** During the first part of 1995, two cement hauling or concrete companies approached Ronald about using Metroplex to provide service for 600 to 800 mobile units. To serve such potential customers Ronald knew that Metroplex needed new frequencies on the 480 to 512 MHz band ("T-band").⁴ ID at 16712-13 ¶¶ 13-14. Ronald was told by Scott Fennell of the Personal Communications Industry Association, Ltd. ("PCIA"), the frequency coordinator, that, pursuant to PCIA and FCC rulings, Metroplex, Ronald, and Patricia could apply for only one T-band license in each of their names. John Black of Spectrum License Consultants, Inc., confirmed what Fennell told Ronald. Black understood PCIA policy to parallel 47 C.F.R. § 90.313(c), which states, in pertinent part: "A licensee will be required to show that an assigned frequency pair is at full capacity before it may be assigned a second or additional frequency pair." ID at 16713 ¶ 15.

8. Ronald testified that Black told him that Metroplex could obtain multiple T-band channels, despite this limitation, by using different names on the applications and then combining the licenses into one system. ID at 16713 ¶ 16; Tr. 586. Ronald further testified that he researched this matter and discovered four companies that had apparently structured their T-band systems in this manner. After Ronald and Black researched the available T-band frequencies, Ronald faxed a list of names and addresses to Black and asked him to prepare applications in those names. ID at 16713 ¶ 17. The list of names included: David L. Brasher, D.L. Brasher (the same person), O.C. Brasher (Ronald's deceased father), Ruth I. Bearden (the maiden name of Ronald's deceased mother), Carolyn Sue Lutz (Metroplex's then office manager and Patricia's sister), Jim Sumpter (Metroplex's then accountant and Patricia's brother-in-law), Norma Sumpter (Jim's wife and Patricia's sister), Melissa Sumpter (Jim and Norma's daughter), and Jennifer Hill (Jim and Norma's daughter). ID at 16713-14 ¶¶ 17, 19. Black prepared the applications and returned them to Ronald. After they were signed, they were submitted to PCIA. The PCIA control numbers indicated that they were all received on the 176th day of 1996, i.e., June 24, 1996. ID at 16713-14 ¶ 18. The Commission granted all of the licenses on September 25, 1996, with the exception of Melissa's, which was granted on October 2, 1996. EB Exhs. 10, 19.

9. **Inquiries concerning the applications.** In November, 1997, a company called Net Wave Communications, Inc. ("Net Wave") filed a petition for an order to show cause why Metroplex's licenses should not be revoked. ID at 16721-22 ¶¶ 51-52. Net Wave alleged that Metroplex had knowingly made false statements on the applications with respect to the real parties-in-interest in the applications and that Metroplex had concealed the family relationships between the applicants. Net Wave characterized the various nominal applicants as Metroplex's "foot soldiers" and not the true real parties-in-interest in their respective applications. Net Wave accused Metroplex of "paper licensing" and "hoarding frequencies" using the allegedly false applicants. Metroplex responded, on November 25, 1996, with an opposition denying those allegations. ID at 16722 ¶ 53.

10. The Commission subsequently initiated an inquiry into the applications. It sent out a letter of inquiry on November 9, 1998, to which Metroplex responded on December 7, 1998, and

⁴ The companies in question are still Metroplex customers. Tr. 97. Metroplex services a total of 1,000 to 1,200 mobile units on its T-band system. ID at 16712 ¶ 13. It also services 1,000 to 1,400 mobiles on its 900 MHz system and an additional 70 or 80 mobiles on its 800 MHz system.

one on March 4, 1999 to which Metroplex and its principals responded on April 5, 1999. Metroplex filed a further response on August 3, 1999. The Commission sent a further letter of inquiry on September 9, 1999, to which Metroplex responded on October 13, 1999. Commencement of the instant proceeding followed. ID at 16726 ¶ 75, 16727 ¶ 77, 16731 ¶ 92, 16738 ¶ 122.

Findings of Fact – Participation of the Nominal Applicants in Their Applications and Facilities.

11. **O.C. Brasher.** The ALJ found that Ronald's father, O.C. Brasher, died on August 17, 1995, roughly one year before the filing of his application. ID at 16714 ¶ 20. On June 17, 1996, Ronald signed O.C.'s application "O.C. Brasher." Ronald testified that he filed the 1996 application in O.C.'s name because it was O.C.'s desire when he was alive to have a station. ID at 16714 ¶ 21. Ronald explained that O.C. had submitted an application for a station on June 29, 1995, but that PCIA mishandled the application, which was never filed with the Commission. Ronald and Patricia testified that they considered the 1996 application part of O.C.'s estate.

12. The ALJ found that Ronald and Patricia, not O.C.'s estate, had paid for the construction and operation of O.C.'s station using equipment owned or leased by Metroplex. ID at 16714-15 ¶ 22. On November 17, 1997, the Commission sent out a Form 800A, asking whether O.C.'s station had been constructed and whether it was operational. Ronald filled out the document and signed it "O.C. Brasher EST. R. D. Brasher." ID at 16715 ¶ 23. Ronald explained that "EST." meant "estate." Later, in 1998, Ronald prepared and filed an application for the assignment of O.C.'s station from O.C. to Metroplex. The assignor's signature was "O.C. Brasher" with the handwritten date "1-26-98." ID at 16715 ¶ 24.

13. On March 29, 1999, Ronald signed the name "O.C. Brasher" to a document entitled "Radio Station Management and Marketing Agreement" ("Agreement"). The Agreement called for Metroplex to manage the station, lease equipment to the stations, and collect the station's revenues with any profits to be paid to O.C. ID at 16715 ¶ 25. The Agreement also contained language providing that the licensee (i.e., O.C.) retained ultimate supervision over the stations and that he would indemnify Metroplex under certain circumstances. ID at 16716 ¶ 26. Ronald testified that he signed O.C.'s name to the Agreement pursuant to a "Durable Power of Attorney" that O.C. executed before his death. That document, however, indicated that O.C. had revoked the power of attorney the same day it was executed, January 16, 1992. ID at 16717 at ¶¶ 27-28.

14. **The Sumpters.** The ALJ found that Ronald, Patricia and the Sumpters sharply disagreed as to the circumstances surrounding the preparation of the Sumpter applications. The applications contained the signatures: "Jim Sumpter," "Norma Sumpter," "Melissa Sumpter," and "Jennifer Hill."

15. Ronald and Patricia testified that, in early 1996, Patricia asked Norma if she and Jim would be interested in obtaining radio licenses and explained to Norma that she and Ronald could not obtain any more licenses in their own names. Norma allegedly told Patricia that she and Jim would be interested and later, in response to a further inquiry, that Melissa and Jennifer were also interested. ID at 16718 ¶ 33. Patricia testified that she, Ronald, Norma and/or Jim had

eight to ten conversations over a period of four to six months on the subject of the Sumpters applying for licenses and that Patricia had also spoken to Jennifer. ID at 16718 ¶¶ 34-36. Ronald and Patricia testified that, on June 10, 11, or 12, 1996, they took the applications that Black had prepared to Jim's office and delivered them to Norma and that, on June 17 or 18, they went to Jim's office and picked up the signed applications. ID at 16719 ¶¶ 37-39, 41. At that time, Patricia prepared checks for the application fees and Ronald transmitted the applications to PCIA for coordination.

16. The Sumpters, by contrast, all denied that they had signed the applications filed in their names, that they knew that applications had been filed in their names, or that they had given permission for anyone to file in their names. ID at 16717-18 ¶ 31. Gail Bolsover, a Forensic Document Analyst for the U.S. Postal Inspection Service testified that, in her opinion, the signatures that appeared on the Sumpter applications were not the genuine signatures of Jim, Norma, Melissa, and Jennifer and that Norma's, Melissa's and Jennifer's signatures all appeared to have been written by the same person. She was not able to identify the writer of the signatures. ID at 16715 ¶ 24, 16718 ¶ 32.

17. Ronald, Patricia and the Sumpters also differed on the circumstances surrounding the execution of so-called "client copies" of the applications. Ronald testified that after he picked up the signed copies of the applications from Norma, he noticed that "client copies" of the applications, that had been included with the copies for submission to PCIA, had not been signed. Ronald said that he told Norma that he needed to have the client copies signed. ID at 16730 ¶ 89-91. According to Ronald and Patricia, Norma, Melissa, and Jennifer visited Ronald and Patricia's home on Saturday June 22, 1996, for shopping, conversation, and social activities. Ronald and Patricia testified that Norma, Melissa, and Jennifer signed their client copies, and Ronald photocopied the signed documents. ID at 16731 ¶¶ 92-93. As Jim was not present, his client copy was not signed or photocopied.

18. The Sumpters denied that they signed the client copies and suggested that the signatures were copied from other documents. ID at 16731-32 ¶ 94. In particular, they testified that Norma could not have visited the Brashers and signed her copy that weekend, since she had accompanied Jim when he visited his ill, elderly aunt at her home 325 miles away. ID at 16732 ¶¶ 95-96. The Sumpters produced credit card and telephone receipts and other items that assertedly documented the trip. The ALJ found that Bolsover, the document analyst, testified that signatures of Norma, Melissa, and Jennifer appeared genuine and that she could not tell whether the signatures were original to the documents, since she examined poor quality photocopies of the signatures. Bolsover did testify that the dates accompanying the signatures, "6-22-96," were machine copies of the same handwritten entry. ID at 16732-33 ¶¶ 97-99.

19. The ALJ found that Patricia testified that Norma and Jennifer called to tell her that they had received their licenses, but that the Sumpters testified that they did not recall receiving their licenses and that they forwarded all FCC-related mail to Ronald. ID at 16720 ¶¶ 42-43. The ALJ further found that Ronald undertook the responsibility of constructing the stations using equipment owned or leased by Metroplex and that it was understood by everyone that Metroplex would bear all costs of operation. All of the revenue received from the stations was deposited in the Metroplex account and no payments were made to the Sumpters, who had no involvement in

station management. ID at 16720-21 ¶¶ 44-48. The ALJ found that Metroplex did not break down revenues and expenses by station. ID at 16721 ¶¶ 49-50.

20. According to the ALJ, the Sumpters testified that they did not learn of their licenses until the filing of the Net Wave petition. ID at 16721 ¶ 51. Jim testified that Ronald assured him not to worry about the Net Wave petition and that he (Ronald) would take care of it. ID at 16722 ¶ 54. Jim said that he was happy for Ronald to do this, although he (Jim) did not understand the draft opposition to Net Wave's petition. Jennifer testified that she called Patricia and Ronald and that Ronald had assured her that everything was under control and that she had done nothing wrong. ID at 16723 ¶ 58. On November 29, 1997, after the opposition to Net Wave's petition had been filed, each of the Sumpters sent Ronald and Patricia letters drafted by Jim indicating that they were unaware that they were licensees, that they had not signed any documents, and that they wanted their names removed from the licenses. ID at 16723 ¶ 57.

21. By this time, the Commission had sent out copies of FCC Form 800A, which requires the licensee to indicate whether its station was constructed and operational. Jim and Norma signed their Form 800As on December 16, 1997, but advised Jennifer and Melissa not to sign theirs. Jennifer and Melissa discarded their Form 800As. ID at 16723 ¶ 59. Jim and Norma then, on December 20, 1997, addressed letters to Ronald and Patricia acknowledging that they signed the Form 800As and asking Ronald to transfer the licenses out of their names. ID at 16723 ¶ 60. Ronald provided FCC Form 1046s (transfer applications) to the Sumpters, which each of the Sumpters signed on January 28, 1998. ID at 16723-24 ¶ 61. Because Jennifer and Melissa did not return their Form 800As or respond to subsequent Commission correspondence, the Commission in April 1998, cancelled their licenses. ID at 16723 ¶ 62. In July 1998, Ronald called Jim and told him that if Jennifer and Melissa did not file their Form 800As, they would be "in big trouble." ID at 16724 ¶ 63. Jim, at that point, retained legal counsel.

22. **Carolyn Sue Lutz**. In 1996, Carolyn served as Metroplex's office manager. The ALJ found that Ronald asked Carolyn to apply for a license and told her that she would not have to do anything with regard to the station. Carolyn testified that she signed the application as a favor to Ronald. ID at 16724 ¶¶ 64-66. The ALJ further found that Ronald undertook responsibility for constructing and operating the station using equipment owned or leased by Metroplex. Carolyn was not involved in the management of the station, paid none of the costs associated with the station, and received none of its proceeds. ID at 16724-25 ¶ 67-69.

23. The ALJ found that, in late 1998 or early 1999, Ronald asked Carolyn to sign a management agreement identical to that executed for O.C. but that Carolyn refused because she did not consider the station hers and did not want to be bound by the terms of the agreement. Carolyn made a counteroffer to Ronald and no agreement was ever signed. ID at 16725 ¶ 70. After the Netwave petition was filed, Carolyn asked Ronald to remove her name from the license, because she "knew that [she] had done something illegal."⁵ On January 26, 1998, she signed an application to assign the station to Metroplex for which she received no compensation. ID at 16725 ¶ 71.

⁵ Tr. 1239.

24. **Ruth I. Bearden.** The ALJ found that Ronald's mother, Ruth, died April 22, 1991. On June 18, 1996, Ronald signed Ruth's name to an application. ID at 16725-26 ¶¶ 73-74. At the hearing, Ronald testified that he filed the application in Ruth's name because Ruth's brother (Ronald's uncle), Ed Bearden, had requested him to. ID at 16735 ¶ 105. Ronald testified that Ed wanted to use the license in his sand and gravel hauling business but that Ed could not apply in his own name because he was a convicted felon. Ronald further testified that after Ed told him the sand and gravel business no longer existed, Ronald, on July 30, 1996, contacted PCIA and told them to stop processing the application. Ronald stated that he did not receive the license that was ultimately granted. ID at 16735 ¶¶ 106-07. In April 1998, after the Commission cancelled the Bearden license, Ronald wrote to Black, asking him to apply for the license on behalf of Metroplex. ID at 16735 ¶ 108.

Findings of Fact – Responses to Net Wave Petition and Commission Inquiries.

25. The ALJ noted the presence in Metroplex's responses of representations that could be construed as inaccurate or misleading in light of the findings recited above.

26. **Net Wave Petition.** Net Wave's petition sought an order to show cause why Metroplex's licenses should not be revoked for, among other things, "grossly misleading and deliberate misidentification of the real party in interest to applications for those [T-band] facilities. . . . ID at 17621-22 ¶ 52. The opposition, filed on behalf of the "Operators," including O.C., the Sumpters, Carolyn, and Ruth, denied those allegations. The opposition stated specifically that: "Each of the Operators retains control of its own station(s)." ID at 16722-23 ¶ 56. The opposition also stated: "Net Wave offered nothing in support of its suggestion that [each] of the Operators is not a separate real party in interest." ID at 1622-23 ¶ 56.

27. **Response to November 9, 1998 Letter of Inquiry.** In its December 7, 1998 response to the Commission's letter of inquiry, Metroplex addressed the licensees' role in supervising Ronald. The response represented that:

Ron Brasher makes reports available of station operations, including customer loading, preventive maintenance performed, air time usage by month and day, customer additions and deletions, and revenues and expenses for each station. Most of the licensees do review these reports and give directions to Ron Brasher for improvement or for correction of problems. Ron Brasher is obligated to follow the directions of each licensee. . . .

ID at 16727 ¶ 76. Metroplex also indicated that: "Each applicant and licensee was responsible for reviewing and signing its own application in connection with the managed stations." ID at 16727 ¶ 76.

28. **Response to March 4, 1999 Letter of Inquiry.** Metroplex's April 5, 1999 response to the letter of inquiry described the criteria Ronald used to select prospective applicants and licensees. These were stated to be:

(i) the person must have been known to [Ronald]; (ii) the person must be able to fulfill the duties of a Commission licensee, (iii) the person must have been willing to fulfill the duties of a Commission licensee; (iv) the person must have been willing to participate in the funding of the construction of the facilities; (v) the person must have been willing to participate in the funding of the costs of operation; (vi) the person must have been willing to accept the risk of failure of any business arising out of operation of the facilities; and (vii) the person must have been willing to actively participate in the sale of service and equipment to be provided to customers of the subject station. Persons who did not evidence either the ability or the willingness to perform each of these tasks were not allowed to participate in any managed station agreement.

ID at 16727-28 ¶ 79. Additionally, Metroplex's response made representations about specific licensees. It described Ronald as the "Son of O.C. Brasher," without disclosing that O.C. was deceased. ID at 16727 ¶ 78. Concerning the Sumpters, Metroplex recited: "The Sumpters were informed of the duties that their participation would require and the potential benefits of ownership which might be obtained by the Sumpters if the facilities were successful. . . ." ID at 16728 ¶ 80. As to Carolyn, Metroplex stated: ". . . Ms. Lutz would be entitled to all benefits of operation as a Commission licensee, including that portion of all profits . . . that would arise out of operation of the facilities." ID at 16728 ¶ 80. Metroplex's response further indicated that: "[With the exception of the Sumpters a]ll other licensees participating in management agreements with DLB have provided substantial direction and supervision regarding the operation of the subject facilities." ID at 16728 ¶ 80.

29. **September 9, 1999 Letter of Inquiry.** The Commission's further letter of inquiry asked Metroplex and its principals to address the circumstances surrounding the applications filed on behalf of O.C. and Ruth, including whether these individuals were deceased. Ronald's response purported to describe his role in the preparation and filing of their license applications and transfer applications. With respect to O.C., Ronald's response stated:

On September 25, 1996, the Commission issued a license . . . in the name of O.C. Brasher. By this time, O.C. Brasher had passed away, and his son, Ronald D. Brasher, was named the execut[o]r of the estate of O.C. Brasher. In his capacity as Executor of the Estate, Ronald Brasher attempted to preserve the license as an asset of the estate. Therefore Ronald Brasher prepared and submitted an application to assign the license out of the name of the deceased and into the name of one of the heirs to the O.C. Brasher estate.

ID at 16734 ¶ 102. The ALJ found that Ronald was not aware of any order of the probate court appointing him executor of O.C.'s estate. ID at 16734 ¶ 103. With respect to Ruth's application, Ronald's response stated that:

The intent of [the Bearden] application was to create a license in the name of a corporation for which Ruth I. Bearden was formally the principal. Due to an error in the preparation of the application at issue and the similarities that exist between the names of Ronald Brasher's late mother and this entity, the license was applied

for in the name of the individual instead of the corporate entity that was the intended recipient of the license. Immediately upon learning of the error in the name of the entity applying for the license, Ronald Brasher contacted the frequency coordinator in an attempt to cancel the application here at issue Subsequent to this request to halt the processing of this application, the license was issued. Ronald Brasher immediately contacted the Commission by telephone, requesting that the license . . . be cancelled.

ID at 16734-35 ¶ 104.

Conclusions of Law – Real Party-In-Interest, Unauthorized Transfer of Control, Abuse of Process.

30. The ALJ concluded that Ronald, Patricia, and Metroplex were the undisclosed real parties-in-interest to the applications at issue and that they exercised de facto control over the license without Commission authorization in violation of 47 U.S.C. § 310(d). He further concluded that filing an application in the name of a surrogate constitutes an abuse of process. ID at 16746-47 ¶¶ 153-55.

31. The ALJ evaluated the issue of control using the criteria set forth in Intermountain Microwave, 24 RR 983, 984 (1963), and applied in Marc Sobel, 17 FCC Rcd 1872, 1876-87 ¶¶ 11-58 (2002). These criteria are:

- (a) Does the licensee have unfettered use of all facilities and equipment?
- (b) Who controls daily operations?
- (c) Who determines and carries out policy decisions, including preparing and filing applications with the Commission?
- (d) Who is in charge of employment, supervision and dismissal of personnel?
- (e) Who is in charge of the payment of financing obligations, including expenses arising out of operating?
- (f) Who receives monies and profits from the operation of the facilities?

ID at 16747 ¶ 156.

32. The ALJ concluded that, under these criteria, Ronald, Patricia, and Metroplex had de facto control over the stations licensed to O.C., the Sumpters, and Carolyn, who in turn exhibited no indicia of control. ID at 16747-50 ¶¶ 157-67. He observed that the nominal licensees did not prepare or file their own applications, did not pay the application fees, did not prepare any forms or reports to the Commission, had no control over any aspect of daily station operations, had no role in making policy decisions regarding their stations, did not hire, fire, or supervise station employees, did not purchase the equipment used at their stations, did not pay construction costs or operating expenses, and did not receive any revenue generated by the stations. The ALJ further concluded that Ronald, Patricia, and Metroplex exercised all of the above functions, that they did not manage the stations on behalf of the licensees, and that they were operating the stations for no one but themselves.

33. In view of these findings, the ALJ concluded that the Ronald, Patricia, and Metroplex were the undisclosed real parties-in-interest in the applications, since they controlled the filing of the applications and because the applications were filed solely for their own benefit. Additionally, the ALJ concluded that Ronald, Patricia, and Metroplex abused the Commission's processes, because they filed the applications in the names of others to evade limitations on ownership imposed by the Commission's rules and to acquire more stations than the Commission would allow. ID at 16750 ¶ 167-68.

Conclusions of Law – Misrepresentation and Lack of Candor

34. The ALJ concluded that Ronald and Metroplex made misrepresentations of fact to the Commission, and concealed material information from the Commission in numerous instances. The ALJ concluded that by signing O.C.'s and Ruth's names to applications, Ronald falsely represented that these two individuals had signed their own applications and were living persons. In the ALJ's view, Ronald compounded these acts by signing O.C.'s names to other documents, such as the Agreement. ID at 16736-38 ¶¶ 112-13, 116-17. Moreover, the ALJ concluded that Ronald concealed the fact of O.C.'s and Ruth's deaths in responding to the Net Wave petition and to the Commission letters of inquiry until after the Commission had independently learned of their deaths. ID at 16738-39 ¶¶ 119-24. The ALJ noted in particular, that in finally acknowledging O.C.'s death in his October 13, 1999 response, Ronald's language misleadingly suggested that O.C. had died after the filing of his application not before it. ID at 16740 ¶ 128.

35. The ALJ also concluded that Ronald and Metroplex made other misrepresentations in responding to Commission letters of inquiry. With respect to the filing of Ruth's application, the ALJ noted that the account that Ronald gave in responding to the Commission's September 9, 1999 letter of inquiry was totally different from the account that he gave at the hearing, which involved Ruth's brother, Ed. ID at 16739-40 ¶¶ 125-27. The ALJ further concluded that the description contained in responses to the Commission letters of inquiry as to how Ronald selected the applicants and as to the control and supervision that the licensees purportedly exercised were fabrications, since the record demonstrated that the licensees accepted none of the responsibility and exercised none of the control and supervision that the responses claimed. ID at 16740-42 ¶¶ 129-38.

36. Finally, the ALJ concluded the Ronald and Patricia lied in their accounts of their dealings with the Sumpters. The ALJ accepted the Sumpters' testimony that they did not give Ronald permission to file applications in their names and that they did not sign the client copies and rejected the contrary testimony of Ronald and Patricia. ID at 16742-45 ¶¶ 139-48. In this regard, the ALJ made specific demeanor findings with respect to these witnesses. He found the testimony of the Sumpters "forthright, candid and entirely believable," especially during the course of arduous cross-examination. He found, by contrast, that the record concerning Ronald and Patricia demonstrated a "pervasive and consistent pattern of deceit." ID at 16748 ¶ 148.

Conclusions of Law – Ultimate Conclusion

37. The ALJ concluded that Ronald, Patricia, and Metroplex violated the basic obligation of licensees to be truthful and that they committed disqualifying deceit. He further found that the findings under the real party-in-interest, unlawful transfer of control, and abuse of process issues indicated further disqualifying deception on the part of Ronald, Patricia, and Metroplex. Accordingly, he concluded that Ronald, Patricia, and Metroplex were not basically qualified to be Commission licensees and that their licenses should be revoked and their pending applications denied. ID at 16745-46 ¶¶ 149-52, 16750-51 ¶ 169-70.

III. DISCUSSION

Real Party-In-Interest, Unauthorized Transfer of Control

38. Exceptions. Appellants⁶ do not dispute the ALJ's conclusion that, judged by the standards of Intermountain, Ronald, Patricia, and Metroplex exercised de facto control over the stations and were the real parties-in-interest. Instead, they argue that the Intermountain criteria are obsolete as applied to contemporary business arrangements, such as management contracts, and that the Intermountain criteria cannot be meaningfully applied to family relationships.⁷ As to the latter argument, appellants contend that the various family members, including the Sumpters contributed in various fashions to the success of the overall enterprise and benefited in various ways from the success of the stations. Thus, for example, Appellants find it unremarkable that Ron and Pat financed all of the stations, since they could afford to. Appellants state: "The Brashers have averred that during all times relevant *de facto* control of the subject licenses was held by the family and that such control never transferred, until such time as this matter involuntarily fractured the family unit." DLB Exceptions at 21 ¶ 45.

39. Analysis. Appellants' position is without merit. The record of this case provides no support for the idea that the "family" exercised control over the radio business or over any of the licenses. It indicates that Ronald and Patricia Brasher exercised control as the sole owners of Metroplex (Tr. 754). Ronald and Patricia testified that the major decisions at Metroplex were made through joint discussion among Ronald, Patricia, David, and Diane but that the final say was Patricia's. Tr. 77-79, 770-71. As Patricia put it, she "calls the shots." Tr. 754. Jim Sumpter and Carolyn Lutz may have been employed by the business in more or less important capacities, as well as being family members, but there is no indication that they, or the other Sumpters, were ever regarded as owners capable of exercising control. The ALJ's analysis under the Intermountain criteria, which we adopt in all material respects, does no more than confirm that the nominal licensees did not exhibit any indicia of control. Appellants' accurately

⁶ Ronald, Patricia, and DLB filed separate exceptions. Since these pleadings present what are in effect a single consolidated set of arguments, we will refer to these parties simply as "Appellants" except where it is appropriate to cite to a specific pleading. Where we do not summarize the Enforcement Bureau's reply, this indicates that we agree with the Bureau's position in material respects and believe that a summary would be redundant.

⁷ Appellants also observe that Ronald, who had no counsel, was unfamiliar with the Intermountain criteria. While this factor may bear on his intent, it has no relevance to the issue of whether control was actually transferred, which is an objective determination based on the conduct of the individuals involved.

characterize what Carolyn and the Sumpters brought to the stations as “licensing assistance,”⁸ since they secured the licenses for Metroplex and nothing more.

40. Appellants’ claims that the licensees exercised control in some respects are not supported by the record. Appellants state: “Jim Sumpter made all decisions regarding the finances of the business” DLB Exceptions at 21 ¶ 45. But Appellants point to no record evidence to substantiate this claim. Rather, the record indicates no more than that Jim was a self-employed certified public accountant who served as Metroplex’s accountant from 1982-97, providing them with bookkeeping services and advice, particularly tax advice. Tr. 1738-39. Additionally, Appellants cite Ronald’s testimony that Norma, for no apparent reason, directed Ronald to take hers and Melissa’s stations off the air. DLB Exceptions at 22 ¶ 47; Tr. 560-61. Ronald’s testimony, however, cannot be corroborated. Carolyn, who, according to Ronald, relayed Norma’s request to him, did not recall any such incident. Tr. 1137. Norma testified that she did not even know that there was a license in her name. Tr. 2099. Melissa testified that she never asked that her station be taken off the air or directed Norma to do so. Tr. 1344. Moreover, O.C. Brasher and Ruth Bearden obviously exercised no control over the radio business or the stations, since they were deceased.⁹

41. We acknowledge that the Intermountain criteria might be viewed differently to take into account the emergence of new forms of spectrum use in the wireless services. That consideration, however, does not warrant a different result in this case. We note, for example, that in Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, 18 FCC Rcd 20604, 20630-42 ¶¶ 54-81 (2003), we declined to apply the Intermountain criteria to spectrum leasing arrangements and held that, in the spectrum leasing context, section 310(d) did not require the licensee to exercise close working control over, determine the services on, and set policies affecting the stations operating on the licensed spectrum. We nevertheless required licensees to maintain de facto control over the use of the leased spectrum by exercising “reasonable operational oversight over the leased spectrum so as to ensure that the spectrum lessee complies with all applicable technical and service rules.”¹⁰ 18 FCC Rcd at 20635 ¶ 65. Assuming arguendo that such a standard might be applied here,¹¹ we would still find that that the nominal licensees failed to maintain control consistent with section 310(d) or were real parties-in-interest. As the findings recited above

⁸ DLB Exceptions at 20 ¶ 43.

⁹ Appellants nevertheless recite that: “The family members chosen had knowledge of DLB’s business and contributed in various fashions to the success of the overall enterprise. . . . O.C. Brasher lived with Ron and Pat and was also fully aware of the efforts of the business.” DLB Exceptions 18-19 ¶ 41.

¹⁰ This means that “a license must maintain a reasonable degree of actual working knowledge about the lessee’s activities and facilities that affect its ongoing compliance with the Commission’s policies and rules.” 18 FCC Rcd at 20636 ¶ 66. Additionally, the licensee must be in a position to remedy any violations of the lease or the Commission’s rules or suspend or terminate operation of the system. 18 FCC Rcd at 20636 ¶ 67.

¹¹ In establishing rules for spectrum leasing, we did not deny the applicability of Intermountain in other contexts, such as the evaluation of management agreements. 18 FCC Rcd 20717 ¶ 318. Instead, we sought comment on whether the revised standard should be applied in such contexts. Moreover, the spectrum leasing rules establish reporting and other requirements in place of the Intermountain criteria. We do not suggest that it would be permissible to depart from the degree of control presumed by the Intermountain criteria without complying with these safeguards.

indicate, none of the purported licensees exercised any sort of operational oversight over their facilities or had an expectation of enforcing any degree of control over Metroplex. Moreover, the licensees here did not even have the degree of connection to and interest in their licensed facilities that is implied by the idea of spectrum leasing, since they received no rents from their facilities and had no other financial stake in them. The record of this case thus amply demonstrates that Ronald, Patricia, and Metroplex exercised de facto control over the stations and were the real parties-in-interest.

Abuse of Process

42. Exceptions. Appellants dispute that Ronald's actions should be considered an abuse of process. They argue that Ronald's actions did not pursue an illegitimate purpose or subvert the Commission's rules. They assert that Ronald was not attempting to "warehouse" underutilized frequencies, which section 90.313 of the Commission's rules, 47 C.F.R. § 90.313, was intended to prevent. Rather, he was legitimately attempting to acquire frequencies to meet the demands of two large prospective customers.¹² Appellants further assert that Ronald could have accomplished the same lawful goal in an "easier, more straightforward" manner, either by seeking a waiver of section 90.313 or by filing successive, rather than simultaneous, applications. According to Appellants, Ronald did not avail himself of these alternative means only because he was operating without benefit of counsel and relied on the "absurd" advice of Fennell and Black. DLB Exceptions at 11 ¶ 25.

43. Analysis. We disagree. Appellants admit that Ronald filed applications in multiple names because:

... the Brashers became aware that the Commission's rules and regulation[s] at that time prevented DLB from acquiring more than one T-Band license at a time and that DLB could not apply for further licenses until such time as all channels on the first license(s) were constructed and fully loaded. . . . Ron Brasher admitted that he believed that such restriction existed and that his efforts were focused on a method to operate in view of this restriction. . . .

Ronald Brasher Exceptions at 5 ¶ 11. Whether or not Ronald believed that his ultimate goal in acquiring the stations was legitimate, by filing applications in multiple names, he prevented the Commission from knowing and examining the true parties to the applications. As we have held: "it is an abuse of process to specify a surrogate to apply for a station so as to deny the Commission and the public the opportunity to review and pass on the qualifications of that party." Arnold L. Chase, 5 FCC Rcd 1642, 1643 ¶ 9 (1990). See also Evansville Skywave, Inc., 7 FCC Rcd 1699, 1702 n. 7 (1992) ("Seeking to obtain a construction permit by misrepresenting or lacking candor about the applicant's ownership structure could . . . generally be characterized as abuse of process.") That Ronald could have pursued his goals by nonabusive means is irrelevant; he did not do so.

¹² Dawn Daniels Ross of PCIA confirmed that, based on PCIA's interpretation of section 90.313, PCIA would coordinate only one frequency pair at a time unless the applicant showed that it had more than 90 mobile units (per channel) in operation. Ross further confirmed that an applicant with only potential new customers, as opposed to units in operation, would not be able to apply for multiple channels. Tr. 2259-62.

44. We reject the suggestion that Ronald acted innocently based on poor advice. We find that an ordinary reasonable person could appreciate the essential dishonesty of applying for licenses in the names of surrogates who would clearly have no ownership or control of the licenses.¹³ Moreover, the record fails to corroborate that anyone gave Ronald misleading advice. In his testimony, Black, whom Ronald indicated advised him to file multiple applications,¹⁴ assumed no responsibility and expressed no support for Ronald's actions. Black acknowledged that he may have discussed the rule with Ronald, although he did not recall such a discussion. Tr. 1645, 1691. However, his testimony indicates that he did not agree that filing in multiple names was a legitimate course of action. He stated that:

... we all make an assumption that if Bill Jones signed an application, that it's really Bill Jones applying for a license, and that signature of Bill Jones is an authentic, valid signature. If we don't make that assumption, then we indeed do destroy the integrity of the whole process.

Tr. 1707.¹⁵ Black stated that he did not advise people about the Commission's aggregation limits. Tr. 1709. He testified that he did not know whether another company, cited by Ronald, had filed applications in multiple names. Tr. 1711. He denied discussing with Ronald the requirements for managed stations or of filing multiple applications. Tr. 1731-33.

Misrepresentation and Lack of Candor – O.C. Brasher filing

45. Exceptions. Appellants deny that the filings made in the name of O.C. reflect an intent to mislead the Commission into believing that O.C. was still alive. According to Appellants, Ronald had two reasons to believe that he was authorized to execute documents on behalf of O.C. First, Appellants refer to a "Durable Power of Attorney" executed by O.C. in 1992. Second, Appellants assert that Ronald was acting as executor of O.C.'s estate. In this regard, Appellants further assert that Ronald considered the 1996 application as a replacement for the 1995 application that PCIA failed to submit to the Commission and that Ronald and Patricia considered the applications as assets in O.C.'s estate. Appellants maintain that Ronald's only error is that he did not understand the formal requirements for executing legal documents in the representative capacities mentioned above but that his actions were consistent both with the Commission's rules, which permit estates to hold licenses, and the Texas Probate Code, under which Ronald was qualified to be executor of O.C.'s estate.

¹³ Carolyn, for example, testified that she was scared after she saw the Net Wave petition because: "I knew I had done something illegal . . . and someone had obviously discovered the loophole and was coming after me for it." Tr. 1239. Jennifer testified that she showed the Net Wave petition to her supervisor at work who was an attorney and a CPA. She testified that his response to reading it was: "My God, what have you gotten yourself into?" Tr. 1057.

¹⁴ Tr. 586.

¹⁵ Black admitted that he knew that the applicants were members of the Brasher family and that the applications specified Metroplex's offices as a common control point, but he denied knowing that the stations would all be operated by Metroplex. Tr. 1706, 1708. In this regard, Black made the above-quoted statement in the context of saying that he relied on Ronald to provide him with eligible applicants. Black testified: "Now, if Ron Brasher tells me that these people, whoever they are, are eligible to hold a license, then I'm going to submit the application" Tr. 1707.

46. Analysis. We find that Appellants' justification for Ronald's actions is not credible and that Ronald intended to mislead the Commission into believing that O.C. was a living applicant. The O.C. Brasher application gives no indication that Ronald signed it in a representative capacity. It bears the signature "O.C. Brasher;" the entry in Box 40, which calls for the "Typed Name of the Person Signing" is "O.C. Brasher;" and the entry in Box 41 "Title" is marked "(Individual)." EB Exh. 3 at 4. This leaves the clear impression that O.C. himself signed the application as an individual.¹⁶ Moreover, the record indicates that, in providing Black with the names of the prospective applicants, Ronald did not inform Black that O.C. was deceased or that O.C.'s estate was intended to be the applicant. On the list of applicants that Ronald provided to Black, the pertinent entry is simply "O.C. Brasher" with an address and telephone number. EB Exh. 66. Black testified that he never discussed with Ronald that O.C. was dead or whether it was all right to submit an application in the name of a deceased person. Tr. 1671-72. See also Tr. 1650 (Black does not know O.C. Brasher).

47. Contrary to Appellant's claims, Ronald had no colorable authority to act on behalf of O.C. or his estate either pursuant to a durable power of attorney or as an executor. O.C. executed a document entitled "Durable Power of Attorney for Financial Matters of Oscar Colquitt Brasher" on January 16, 1992. RB/PB Exh. 2. Under Texas law, however, a durable power of attorney terminates upon the death of the principal. Tex.Prob.Code Ann. § 486(a). Ronald testified that he did not know the effect of the grantor's death on a power of attorney. Tr. 332. Moreover, the document contains a "Revocation Provision," which reads: "I Oscar Colquitt Brasher, revoke all authority of my Agent as of 1:42 o'clock p.m on January 16, 1992. Oscar Colquitt Brasher. [Marked text is handwritten.] Ronald testified that he saw his father sign the revocation provision, but insisted that the power of attorney had not been revoked and that he (Ronald) could not understand or explain the revocation provision. Tr. 606-08. Ronald therefore had no colorable basis to rely on any authority pursuant to this document. This and the uncertainty of his testimony indicates that Ronald's claimed reliance is no more than post hoc rationalization.

48. Similarly, the record gives no indication that Ronald acted as the executor of O.C.'s estate. Under Texas law, to be appointed an executor a person must make application to the probate court and receive letters testamentary.¹⁷ Tex.Prob.Code Ann. §§ 76, 178, 181, 189. Ronald testified that he had not (as of his testimony in February 2001) filed O.C.'s will with the probate court, been appointed executor by the probate court, or made any distribution of property. Tr. 333-34. The record also gives no indication that Ronald treated the station as an asset of O.C.'s estate. Ronald did not charge the estate with the cost of constructing or operating the station, did not, at the time, credit the estate with station profits, and did not, at the time, compensate the estate for assigning the station to Metroplex.¹⁸ Ronald's failure to take any

¹⁶ The Commission's rules require that if an applicant is an individual, the application must bear the original, handwritten signature of the applicant. 47 C.F.R. § 1.913(a), (e) (1996) (current § 1.917(a),(d)).

¹⁷ See also Garcia v. Caremark, Inc., 921 S.W.2d 417, 420-21 (Tex. App. 1996) ("De facto" administrator did not "qualify" as personal representative under the terms of the Probate Code).

¹⁸ In responding to EB's request for admissions, Ronald admitted that neither O.C. nor his estate paid for the construction or operating costs of the station. He further stated that: "The estate is due compensation for the value of the license and the revenue owed the licensee's use to date, however, calculation and valuation of such compensation has been tolled until the controversy has been resolved to assure accuracy." EB Exhs. 24, 25, items 33, 35, 36.

formal steps to be appointed executor or to treat O.C.'s estate as an executor would make Ronald's purported reliance appear no more than post hoc rationalization.¹⁹

Misrepresentation and Lack of Candor – Ruth I. Bearden filing.

49. Exceptions. Appellants admit that Ronald's actions in filing an application in Ruth's name were not "entirely honorable." Ronald Brasher Exceptions at 16 ¶ 32. Appellants note Ronald's testimony that he filed the application to assist his uncle, Ed Bearden. Appellants admit that Ronald's actions "were not in accord with the dictates for Commission applicants" and "were likely outside the standards for a Commission licensee." Ronald Brasher Exceptions at 16 ¶ 32, 17 ¶ 33. Applicants claim, however, that Ronald was forthcoming and remorseful at the hearing, that he had not benefited personally from the application, and that he had taken steps to see that the application was not submitted to the Commission in the first place.

50. Analysis. At the hearing, Ronald essentially admitted that he intended to abuse the Commission's processes by filing an application on behalf of an undisclosed real party-in-interest. He stated that he filed the application at the request of his uncle, Ed Bearden, so that Ed could use the licenses in his sand and gravel business. Tr. 196. Ronald further testified that he did not file in Ed's own name since Ed was a convicted felon and Ronald believed that Ed could not apply for a license. Tr. 196-97. Ronald testified that he attempted to stop the processing of the application after he had submitted it to PCIA for coordination because Ed had told him that the sand and gravel business no longer existed.²⁰ Tr. 201-02. Ronald's testimony is thus entirely consistent with the pattern of misconduct discussed above, since it illustrates his willingness to deceive the Commission by filing an application in the name of a surrogate. The only difference is that, in this instance, he attempted to terminate the deception because it was no longer necessary.

Misrepresentation and Lack of Candor – the Sumpters filing.

51. Exceptions. In their exceptions, Appellants spend nearly 20 pages attacking the credibility of the Sumpters' testimony that they did not sign the applications filed in their names or approve of anyone else doing so, and that they did not sign the client copies of their

¹⁹ Appellants cite 47 C.F.R. § 1.948(g) (formerly 1.924(c) (1996)), which provides: "In the event of the death . . . of a permittee or licensee. . . the Commission shall be promptly notified of such death. . . . Within 30 days after the occurrence of such death . . . an application shall be filed for consent to involuntary assignment of such permit or license . . . to a person or entity legally qualified to succeed to the foregoing interests under the laws of the having jurisdiction over the estate involved." Appellants assert that, consistent with this section, Ronald was eligible to apply for a license on behalf of O.C.'s estate, and was not required to report O.C.'s death (which occurred prior to filing the application.) Ronald Brasher Exceptions at 12-13 ¶ 26, 15-16 ¶ 30; DLB Exceptions at 14-15 ¶ 30.

Ronald, however, did not qualify as an executor under Texas law and did not state in his application that he was filing as an executor or on behalf of O.C.'s estate. Appellants reliance on section 1.948(g) is, therefore, unavailing.

²⁰ Ronald sent a fax to PCIA on July 30, 1996, asking PCIA to cancel Ruth's application. EB Exh. 14. Nevertheless, the Commission issued a license to Ruth on September 25, 1996. EB Exh. 10 at 1. Ronald testified that he never received notification of the license and did not recognize the March 31, 1998 letter from the Commission (EB Exh. 10 at 2) canceling the license for failure to notify the Commission of construction. Tr. 181-82, 209. Ruth's station was never constructed. Tr. 137-38. Subsequently, in early April, 1998, Ronald sent a copy of the license to Black marked: "To John Black From R Brasher Please apply for this freq at this location under DLB." Tr. 1666, 1669; EB Exh. 10 at 1. Black filed an application on DLB's behalf on April 19 or 20, 1998.

applications. Patricia Brasher Exceptions at 2-21. Appellants accuse the ALJ of ignoring that the Sumpters had a motive to lie since they were fearful of being punished and wanted to shift the blame to Ronald and Patricia. In this regard, Appellants accuse the ALJ of ignoring that the Sumpters had met among themselves to prepare common testimony.

52. Appellants assert that Jennifer, Norma, and Melissa admitted in letters to Ronald and Patricia that they knew that their names had been used. According to Appellants, although the Sumpters claimed that they were referring to earlier applications, which they admitted to signing in the late 1980s or early 1990s, Jennifer's testimony indicates that they were actually referring to the 1996 applications. Moreover, Appellants assert that they must have known about the licenses issued in their names, since they received mail about them from the Commission. Appellants note that Carolyn and Thomas Lewis, a brother of Patricia, Norma, and Carolyn, admitted that Ronald asked them to sign applications, and suggest that it would be consistent for Ronald to have asked the Sumpters as well. With respect to the client copies, Appellants ask why, if Ronald intended to forge the Sumpters' signatures, he would not have done all four signatures, instead of only Norma's, Jennifer's, and Melissa's. Appellants submit that the documentary evidence that the Sumpters submitted to establish that Jim and Norma were out of town when the client copies were signed, only establishes that Jim was absent from the Dallas area and not that Norma accompanied him on his trip. In any event, Appellants complain that they were unfairly surprised by the introduction of this evidence at the hearing.

53. Additionally, Appellants contend that the testimony of handwriting expert, Bolsover, does not corroborate the Sumpters' testimony. Appellants point out that while Bolsover testified that the signatures on the Sumpters' applications did not appear genuine and that one person probably signed Norma's, Jennifer's, and Melissa's applications, Bolsover could not identify who had executed the signatures. In any event, Appellants contend that even if the Sumpters did not sign their applications, there would be no misrepresentation if the person who did sign reasonably believed that the Sumpters consented to the signatures.²¹ In this regard, Appellants observe that Norma, Melissa, and Jennifer testified that they had signed applications earlier. As to the client copies, Appellants observe that Bolsover testified that the Sumpters' signatures appeared genuine and that Bolsover detected no indication that the signatures had been cut-and-pasted. Appellants accuse the ALJ of drawing unwarranted conclusions from Bolsover's testimony that the dates on Norma's and Jennifer's copies were probably photocopies of one handwritten original.

²¹ The relevance of this argument is unclear, since Ronald and Patricia categorically deny that they signed the Sumpters' applications. In any event, we reject any suggestion that Ronald and Patricia would not be guilty of forging the Sumpters' signatures if they merely believed that the Sumpters "would have consented" to the preparation of applications in their name, as opposed to their actually consenting. Patricia Brasher Exceptions at 13 ¶ 28. In Danville Television Partnership, 16 FCC Rcd 9314, 9317-18 ¶ 7 (Vid. Ser. Div. 2001), cited by Appellants, the party accused of forgery successfully argued that he had actual consent to sign a document with another person's name. This is in accord with general principles of law. An agent commits forgery by exceeding his or her authority in executing a document in another person's name. An agent is not guilty of forgery only if the agent has an honest belief in his or her authority to do so See United States v. Hill, 579 F.2d 480, 483 n.2 (8th Cir. 1978). Appellants also observe that a party can subsequently ratify and be bound by a forged signature. See, e.g., Kadota Fig Ass'n of Producers v. Case-Swaye Co., 167 P.2d 523 (Cal. App. 1946). The Sumpters, however, deny that they ratified their signatures and the case law does not suggest that subsequent ratification nullifies the original forgery.

54. Analysis. We affirm the ALJ's findings that the Sumpters testified truthfully that they did not sign or consent to the signing of their names on the applications and that Ronald and Patricia lied in asserting that they did. In many respects, this issue boils down to a determination of the relative credibility of Ronald and Patricia and the Sumpters. Under these circumstances, the ALJ's findings concerning the relative credibility of witnesses are generally entitled to great weight. See, e.g., TeleSTAR, Inc., 2 FCC Rcd 5, 13 ¶ 23 (Rev. Bd. 1987), citing Penasquitos Village, Inc. v. NLRB, 565 F.2d 1074, 1078-80 (9th Cir. 1977) (administrative law judges' factual determinations based on testimonial inferences are entitled to special deference). In the present case, the ALJ made specific demeanor findings. He held that:

In awarding full credit to the testimony of the Sumpters, the presiding Judge has taken into consideration the nature of the cross-examination of these witnesses by trial counsel for Ronald, Patricia, and Metroplex. Counsel had a deep, booming voice, and the tone which he employed in questioning was extremely confrontational, adversarial, and intimidating. He could also be very sarcastic. Counsel put a great deal of pressure on each of the Sumpters, and a reading of the cold transcript of these proceedings does not begin to do justice to counsel's considerable skills.²² That being said, the Sumpters handled themselves exceedingly well in a highly charged and stressful situation, and their testimony was forthright, candid, and entirely believable.

ID at 16745 ¶ 148. While the ALJ did not make explicit demeanor findings about Ronald and Patricia, he found that: "In contrast, the record of this proceeding as a whole demonstrates a pervasive and consistent pattern of deceit on the part of Ronald and Patricia. Thus, even independent of the conflict in the testimony of the Brashers and Sumpters, there still exist more than ample grounds for concluding that Ronald and Patricia are simply not credible witnesses." ID at 16745 ¶ 148. The ALJ is entitled to rely on this finding. The rule in the federal courts is:

It is not true that a jury must exclude the testimony of somebody who has told a lie. You may think, if you want to, that a person who is false in one respect is false in all, or you may, on the contrary say a person is false in one respect but believable in others. It is just a question of your own common sense applied to the particular testimony that is offered.

Dorothy O. Schulze and Deborah Brigham, A General Partnership, 8 FCC Rcd 442, 444 (1993), quoting United States v. Interstate Engineering Corp., 288 F. Supp. 402, 415 (D. N.H. 1967). As discussed above, and as further discussed below, the record of this case amply demonstrates a pattern of deceit, which provides a sufficient basis to disbelieve Ronald and Patricia consistent with the Interstate Engineering test.

²² In their exceptions, Appellants mischaracterize the ALJ's finding. They state: "... the Court [i.e., the ALJ] found, based on its 'reading of the cold transcript' that it would '[award] full credit to the testimony of the Sumpters. . . ." Patricia Brasher's Exceptions at 3 ¶ 7. Clearly, the ALJ based his findings on his observation of the witnesses during cross examination, not on a reading of the cold transcript.

55. We find that the factors noted by Appellants do not warrant overturning the ALJ's credibility findings.²³ The record indicates that the Sumpters did, as Appellants assert, express fear that their involvement in the filing of the applications might lead to adverse consequences, such as the loss of Jim's CPA license or fines. Tr. 1057-58, 1100-02 (Jennifer), 1366-67 (Melissa), 1891-92 (Jim), 2201-02 (Norma). We agree with Appellants that a witness' fear is relevant to a credibility determination because it tends to establish bias. See, e.g., United States v. Elkins, 70 F.3d 81, 84 (10th Cir. 1995); People v. Martinez, 7 Cal. Rptr.3d 49, 59 (Cal. App. 2003) (evidence of gang membership admissible to show witness biased by fear of gang reprisal). In this case, the Sumpters' testimony is potentially biased by a desire to deny any knowing participation in the filing of the applications. As the above-cited references indicate, however, Appellant's counsel explored the Sumpters' fears in cross examining them. We think that the ALJ's finding that the Sumpters' testimony under cross examination was forthright and credible can fairly be understood to encompass the Sumpters' responses to questions regarding their fears. As an additional matter, we see no significance to the fact that the Sumpters conferred with each other regarding their testimony. Under the circumstances, one would expect family members such as the Sumpters to discuss their testimony with each other even if they were wholly truthful.

56. We have examined the various circumstances that Appellants contend undermine the Sumpters' denial that they signed or authorized the applications in their name or signed the client copies. Although these factors do tend to raise questions about the Sumpters' account, they do not render the ALJ's credibility findings "patently unsupported," which would give us reason to overturn them. See Contemporary Media, Inc. v. FCC, 214 F.3d 187, 197-98 (D.C. Cir. 2000). First, it seems odd, as Appellants contend, that Ronald would not have asked the Sumpters to sign applications when he did ask Carolyn.²⁴ It is also noteworthy that Bolsover, the handwriting expert, could not identify Ronald as the author of the Sumpters' signatures, as she could with respect to the O.C. and Ruth signatures. These factors lend some support for Ronald's and Patricia's viewpoint.

57. Other aspects of Bolsover's testimony, however, cast doubt on Ronald's account and support the Sumpters'. Ronald testified that he gave the four unsigned applications to Norma, who later returned the applications to Ronald with signatures.²⁵ Tr. 414-20, 424-25, 427. See

²³ Appellants complain that the ALJ erred in according unwarranted significance to an alleged inconsistency between evidence given by Ronald and by Patricia. ID at 16743 ¶ 141. The ALJ noted that Patricia testified that she and Ronald had discussed Metroplex's needs with the Sumpters 8-10 times over a period of 4-6 months before the June 11 meeting at which the applications were given to Norma. Tr. 809-13. In an affidavit, however, Ronald indicated that the purpose of the June 11 meeting was to offer the Sumpters an opportunity to become licensees and that Jim and Norma's applications were not signed at this "initial meeting" to give them a chance to decide whether they wanted to hold a Commission license. EB Exh 22 at 6. Appellants complain that the apparent inconsistency reflects no more than ordinary variations in how people recall the same events and should not be viewed as indicating a misrepresentation. Although this is a relatively minor matter, we find that the ALJ did not err in taking this inconsistency into account as one factor in evaluating the credibility of the Brasher's account of their dealings with the Sumpters.

²⁴ Carolyn admitted that she signed her application as a favor to Ronald. Tr. 1162-63, 1165, 1194. Ronald claimed that Carolyn approached Patricia after hearing that the Sumpters were interested in obtaining some licenses and asked Patricia to be included. According to Ronald, Patricia then asked Ronald to ask Carolyn. Tr. 541-42.

²⁵ Ronald, however, had previously insisted on a contrary version of events in letters to the Sumpters. After the Sumpters had written to him that they were unaware that they were licensees, Ronald responded with letters dated

also Affidavit of Ronald D. Brasher, EB Exh. 22 at 6-7. The obvious inference is that one or more of the Sumpters signed the applications. Bolsover, however, testified that none of the Sumpter signatures appeared genuine.²⁶ Tr. 2345. Moreover, while Bolsover could not identify who had written the signatures, she could not eliminate Ronald or Patricia as the author.²⁷ Tr. 2345; EB Exh.75. Thus, although Bolsover was unable to confirm that Ronald or Patricia signed the Sumpter applications, she found that the Sumpters had not signed their own applications and could not rule out that Ronald or Patricia signed them.

58. A second source of questions is the wording of letters sent by the Sumpters, dated November 29, 1997, after the Net Wave petition and opposition were filed. In these letters, all of the Sumpters denied knowledge that they were licensees. Jim wrote:

I have only recently become aware that I am the legal owner of a radio channel in the Dallas area. I did not know that my name had been used. I have never signed any documents in this regard.

EB Exh. 39. Norma's, Melissa's, and Jennifer's statements, however, differed from Jim's. They wrote:

I have only recently become aware that I am the legal owner of a radio channel in the Dallas area. I knew that you had used my name but I understood that if a radio channel was awarded then you would immediately transfer it to your name. I have not signed any documents in this regard in several years.²⁸

EB Exhs. 47, 53, 56. The question arises from the apparent admissions by Norma, Melissa, and Jennifer that they were aware that their names had been used on applications. Additionally, Jennifer and Melissa admit to signing documents at some point in time, although the record contains no evidence that any license was ever issued to them prior to 1996.

59. At the hearing, Norma, Melissa, and Jennifer testified that they were referring to applications they previously signed in the late 1980s or early 1990s. They were cross examined with respect to this testimony, and the ALJ found their testimony credible. Norma had received earlier licenses.²⁹ Jennifer specifically recalled that she signed the earlier application while she was still living at home and before she was married. Tr. 1073-74, 1119. Jennifer also recalled that, after seeing the Net Wave petition, she told Ronald that she did not recall signing anything

January 6, 1998. He told Jim and Norma: "You signed a request for license in July, 1996 at your office with [Jim Sumpter, Norma Sumpter], Pat Brasher and myself present." EB Exh. 37 at 27, 34 at 28. He told Melissa and Jennifer: "You signed a request for license in July 1996 at our house in the presence of [Jennifer Hill, Melissa Sumpter], Norma Sumpter, Pat Brasher and myself." EB Exh. 34 at 29,26, 19 at 00458.

²⁶ In his statement to the Commission dated August 3, 1999, Ronald stated that he had closely examined the signatures on the applications for the first time and noticed that the signatures on Norma's, Melissa's and Jennifer's applications appeared to have been written by the same person. He suggested that Norma's signature appeared consistent with her other known signatures. EB Exh. 22 at 2. Bolsover confirmed the Norma, Jennifer, and Melissa signatures were probably written by the same person. Tr. 2304; EB Exh. 75. As noted, however, she did not agree that Norma's signature was genuine.

²⁷ Bolsover did testify that she eliminated Ronald as the writer of Jim's signature. Tr. 2319.

²⁸ Jennifer added: "In fact I have never signed anything using my married name of Hill." EB Exh. 56.

²⁹ EB Exhs. 42 at 1, 43 at 1, 45 at 12.

in the name of Hill, but only in her maiden name of Sumpter. She testified that Ronald replied: "Once he had my name, he could use it again and again." Tr. 1059. Melissa specifically recalled that she was in high school when she signed the earlier application. Tr. 1315-16, 1320-21, 1346-47. While the absence from the record of licenses issued pursuant to the alleged applications fails to confirm this testimony it does not necessarily mean that they did not sign earlier applications. The ALJ credited the Sumpters' testimony regarding earlier applications, and we defer to his credibility finding.³⁰ Similarly, we accept the ALJ's finding that the Sumpters were not made aware of the licenses by mailings, since the Sumpters referred FCC-related mailings to Ronald without reading them. See ID at 16720 ¶ 43.

60. The third area of concern relates to the client copies. The fact that Jim's copy was unsigned tends to support Appellants' contention that Norma, Jennifer, and Melissa had signed their copies when they visited the Brasher's house while Jim was out of town. Moreover, Bolsover's testimony indicates that the signatures on the client copies were genuine and that she could discern no sign of cutting and pasting. Tr. 2326-27, 2335, 2340; Judge's Exh. 3. Additionally, as Appellants observe, even if the Sumpters' documentation establishes that Jim was visiting his aunt in Junction, Texas on June 22, 1996, the date the client copies were allegedly signed,³¹ this does not establish that Norma accompanied him.

61. Despite these circumstances, the record does not squarely contradict the Sumpters' testimony. Bolsover testified that, because of the poor quality of the photocopies she was examining,³² she could not positively rule out the possibility that the signatures had been cut and pasted from other documents. Tr. 2362-63. Moreover, Bolsover testified that the dates on Norma's and Jennifer's client copies were machine copies of the same handwritten entry. Tr. 2343-44, 2361-62; ALJ Exh. 3 at 2. Thus, Bolsover could not entirely rule out the possibility of forgery, and the presence of the machine copied dates raises a suspicion that tampering did occur. As to the trip to Junction to visit Jim's aunt, the Sumpters' documentation does not establish by itself that Norma was present on the trip. However, the ALJ credited Norma's testimony that she spontaneously recalled that she had been out of town and that she called Jennifer, who had returned to Dallas, to check the credit card receipts and other records to confirm Norma's recollection. Tr. 2033-36. The ALJ also credited Norma's testimony that she

³⁰ Appellants accuse the ALJ of ignoring inconsistencies in the Sumpters' testimony. For example, Jennifer initially testified that she recalled receiving the Form 800A in the mail and "threw it in the trash" because "I was angry. I felt like Ronald was blowing me off." Tr. 1061. She acknowledged, however, that Ronald had filled out a copy of her Form 800A (EB Exh. 55 at 9) and gave it to Jim for Jennifer to sign. Jennifer testified that she refused. Tr. 1061-62. Jim testified that he advised Jennifer not to sign. Tr. 1966, 1978. While Jennifer's recollection seems somewhat faulty in that she manifestly did not throw out the Form 800A, which was in front of her while she testified, she immediately corrected herself, and we do not fault the ALJ's belief that any inconsistency was not material.

³¹ This evidence (EB Exh. 70) includes: (1) notations in Jim's appointment book indicating he would be out of his office on Friday afternoon June 21 and all day Saturday June 22, (2) records of telephone calls to Jim's aunt on Friday morning (to tell her he was coming) and Sunday afternoon (to tell her he arrived home safely); and (3) credit card receipts showing that he ate at a restaurant in his hometown of Mesquite on Friday (before he left) and that he bought a tank of gas on Sunday in Junction (for the ride home). Tr. 1797-1806, 2033-47.

³² That is, Bolsover examined the photocopies that Ronald allegedly made on June 22 after the Sumpters had signed the client copies. The client copies with the original signatures were not accounted for at the hearing.

invariably accompanied her husband when he visited his aunt. Tr. 2048. We defer to the ALJ's credibility findings in this regard.³³

Misrepresentation and Lack of Candor – Net Wave Opposition

62. Exceptions. Appellants fault the ALJ's findings in two respects. First, Appellants fault the ALJ for finding that the Sumpters did not authorize the filing of the opposition to Netwave's petition on their behalf. Second, Appellants assert that the opposition's statement that "Each of the operators retains control of its own station(s)" was not a misrepresentation. Appellants maintain that Ronald was not familiar with the Intermountain criteria, and therefore did not know that the statement was false by that standard. Rather, Appellants maintain that Ronald used a common sense approach to control.

63. Analysis. We find that the opposition was deceptive. Initially, however, we find no misrepresentation or lack of candor in the fact that the opposition represented that it spoke for the Sumpters. Although the opposition does not reflect the Sumpters' views, it appears that Jim acquiesced in its filing. Jim testified (Tr. 1851-57) that he read the opposition in draft, although not carefully, but did not understand it or believe that it reflected his thoughts. Nevertheless, Jim said he was "happy" to let Ronald take care of matters, that he voiced no objection to Ronald filing the opposition, and that he did not inform Ronald that he did not understand the opposition. Tr. 1854-56. Under these circumstances, we do not fault Ronald for believing that he had authority to file on behalf of the Sumpters.

64. On the other hand, we find that the statement "Each of the operators retains control of its own station(s)" (EB Exh. 2 at 3) was false and misleading. As discussed above, the statement was entirely lacking in foundation, since the Sumpters, Carolyn, O.C., and Ruth exercised no control and had no real interest in their stations. Even granting Ronald some latitude to say that the operators somehow retained "ultimate control," that cannot reasonably said of O.C. and Ruth, who were both listed as "operators," although they were deceased and Ruth's station was never constructed. Similarly, the opposition's statements implying that O.C. and Ruth were real parties in interest³⁴ were misleading for the same reason. The opposition gives no indication that O.C. and Ruth were dead or that the statements referred to their estates. A reader could not possibly have known that any such meaning was intended.³⁵

Misrepresentation and Lack of Candor – Responses to Letters of Inquiry

65. Exceptions. Appellants dispute that Ronald concealed the fact of O.C.'s death in the response to Commission's inquiries. They claim that Ronald disclosed this fact in two filings.

³³ We find that Appellants were not materially prejudiced by the fact that they did not have any prehearing notice of this evidence.

³⁴ The opposition stated: "Net Wave presented nothing to support its suggestion that [] each of the Operators is not a separate real party in interest." EB Exh. 2 at 3.

³⁵ Although the opposition ridiculed Net Wave's claim that the applications "concealed" the various family relationships involved, it does conceal knowledge of a significant misunderstanding by Net Wave in this regard. Net Wave erroneously assumed that "D.L. Brasher" was David Brasher's wife, Diane. EB Exh. 1 at 3 ¶ 3. The opposition does not disclose the fact that Net Wave was wrong and that D.L. Brasher and David L. Brasher are actually the same person.

First, they claim that even before the Commission made its inquiry, Ronald executed a Form 800A on behalf of O.C. and signed it "O.C. Brasher EST. R. D. Brasher." RB/PB Exh. 3. Ronald testified that "EST." meant "estate." Tr. 655. Second, DLB's December 7, 1998 response to EB's November 9, Letter of Inquiry, contained a list of the licensees of stations managed by Ronald, including "O.C. Brasher/ Ronald D. Brasher." EB Exh. 17 at 3. In any event, Appellants assert that Ronald did not know that the Commission was unaware of O.C.'s death.

66. More generally, Appellants contend that Ronald was fully forthcoming in answering Commission inquiries. In this regard, they observe that the response voluntarily admitted that the stations were being operated in a trunked manner in apparent violation of the Commission's rules and that they were being operated without written management agreements. DLB Exceptions at 7 ¶ 17. Appellants further observe that they supplied nearly all of the hearing exhibits in this proceeding and that Ronald provided substantive answers to 96.3 percent of all of the questions asked him at the hearing.

67. Analysis. We find that Ronald concealed the fact of O.C.'s death. Appellants' explanation that Ronald did not know that the Commission was unaware of O.C.'s death is disingenuous. The Commission had no way of knowing of O.C.'s death until someone informed it of the fact. Our examination of the record confirms the ALJ's conclusion that O.C.'s death was not clearly disclosed until Jim Sumpter referred to O.C. (and Ruth) as "(deceased)" in a declaration submitted April 9, 1999. EB Exh. 37 at 6.

68. We find that Ronald's apparent reference to O.C.'s estate in the Form 800A did not effectively notify the Commission of O.C.'s death or break the pattern of referring to O.C. as if he were alive. The reference was both obscure and isolated. A reader of the Form 800A who was not familiar with the Net Wave petition would not likely appreciate the purported significance of the reference. Ronald himself essentially admitted as much when he responded to the question: "Is that your testimony, that you intended this to be the official notice to the FCC that O.C. Brasher was deceased?" with the answer "No." Tr. 655. Moreover, Ronald made no other references to O.C.'s "estate" either before or after filing the Form 800A. As discussed above, the opposition to the Net Wave petition, filed only two weeks earlier,³⁶ referred to O.C. as if he were alive. Approximately seven weeks later, on January 26, 1998, Ronald signed the assignment application transferring O.C.'s station to DLB, simply "O.C. Brasher" again making it appear that O.C. was alive. EB Exh. 20 at 10.

69. Metroplex's responses to Commission letters of inquiry prior to the disclosure of O.C.'s death in Jim's April 9, 1999 declaration do not explicitly mention O.C.'s death. The December 7, 1998 response to the Commission's first letter of inquiry includes, as part of a list of licenses of managed stations, "O.C. Brasher/Ronald D. Brasher" without explaining the significance of the dual names.³⁷ EB Exh. 17 at 3. The April 5, 1999 response to the second Commission letter of inquiry provided a list of "Marital/Consanguine Relationships." EB Exh. 19 at 000002. Ronald is described as "Son of O.C. Brasher," without indicating that O.C. is

³⁶ The opposition was filed November 25, 1997; the Form 800a was dated December 9, 1997. EB Exh. 2; RB/PB Exh. 3.

³⁷ The list also refers to a station licensed to "Patricia A. Brasher: Ronald D. Brasher." EB Exh. 17 at 3. Patricia was, of course, alive.

deceased. Attached to the submission was a document entitled "Radio System Management and Marketing Agreement," dated March 29, 1999. EB Exh. 19 at 000500-27. The document indicates that it was entered into by DLB and "Brasher O C." Ronald testified that he had signed the agreement "O.C. Brasher," but that the correct signature page had inadvertently been omitted from the copy submitted to the Commission. Tr. 355-56.³⁸ The August 3, 1999 response to the Sumpter declarations, which indicated that O.C. was deceased, does not mention O.C. EB Exh. 22.

70. Not until the Commission specifically asked about O.C.'s death on September 9, 1999, did Ronald's October 13, 1999 response clearly mention it. It did so in a manner suggesting that O.C. died after the filing of his application, not before it. The response states:

Ronald D. Brasher contracted with John Black . . . in order to prepare the application resulting in the license for station WPJR761. *Attached hereto as Exhibit I.* This application was prepared simultaneously with an application in the name of Ronald D. Brasher. . . . The two applications were placed in the same envelope and mailed to PCIA for frequency coordination on July 1, 1995.

On September 25, 1996, the Commission issued a license . . . in the name of O.C. Brasher. By this time, O.C. Brasher had passed away, and his son, Ronald D. Brasher, was named the execut[o]r of the estate of O.C. Brasher. In his capacity as Executor of the Estate, Ronald Brasher attempted to preserve the license as an asset of the estate. Therefore Ronald Brasher prepared and submitted an application to assign the license out of the name of the deceased and into the name of one of the heirs to the O.C. Brasher estate.

EB Exh. 21 at 24. The application referred to was signed, "O.C. Brasher," and dated, June 29, 1995. EB Exh. 21 at 28. It is the application that PCIA misplaced, not the one, dated June 17, 1996, that resulted in the license grant. EB Exh. 3. Thus, O.C. had not passed away "by this time," between the filing of the application and the grant, he had passed away nearly a year before the application resulting in the grant was filed. Moreover, as mentioned above, Ronald was never "named the execut[o]r for the estate of O.C. Brasher" consistent with the Texas Probate Code. The record also does not establish that DLB, the assignee of the station, was "one of the heirs to the O.C. Brasher estate." This response was hardly candid.³⁹

71. An examination of the various responses to the Commission's letters of inquiry reveals numerous instances of false and misleading responses that add up to a greatly distorted account of the real party-in-interest issue.

³⁸ Due to an alleged collating error, the submitted copy contained a signature page signed "David L. Brasher." EB Exh. 19 at 000524. The correct signature page is EB Exh. 5 at 11. Also allegedly as a result of the collating error, the copy submitted in April 1999 also substituted the page indicating that notice was to be sent to "O.C. Brasher." Again, the corresponding page of the David L. Brasher agreement was substituted. Compare EB Exh. 5 at 10 with EB Exh. 19 at 000523.

³⁹ The response to the letter of inquiry directed to O.C. was worded as follows: ". . . we hereby inform the Commission that O.C. Brasher is deceased (death certificate enclosed). As a result, we respectfully inform the Commission that O.C. Brasher will be unable to respond to the Commission's inquiry. . . ." EB Exh. 21 at 2. O.C. had died four years earlier.

72. The December 7, 1998 response to the Commission's November 9, 1998 letter of inquiry falsely represented the control and supervision supposedly exercised by the nominal licensees. The response states:

Ron Brasher makes reports available of station operations, including customer loading, preventive maintenance performed, air time usage by month and day, customer additions and deletions, and revenues and expenses for each station. Most of the licensees do review these reports and give directions to Ron Brasher for improvement or for correction of problems. Ron Brasher is obligated to follow the directions of each licensee. . . .

EB Exh. 17 at 4. As our findings under the transfer of control issue indicate, the licensees received no reports and gave no directions to Ronald. In particular, O.C., who was deceased, could hardly have done so. The response further states:

Each applicant and licensee was responsible for reviewing and signing its own application in connection with the Managed Stations.

EB Exh. 4 at 5. The deceased O.C. and Ruth obviously did not sign or review their applications and the Sumpters deny that they did so, an assertion which the ALJ and we credit. The Commission also asked whether DLB had received consideration "in exchange for obtaining consent for the assignment" of the licenses and, if not, asked for an explanation of "the circumstances under which [DLB] obtained consent of such licensee(s) for assignment of their licenses." EB Exh. 16 at 3. The response states:

There is no written agreement relating to the assignment of licenses for the Managed Stations. DLB agreed to pay the Commission's application filing fees for each of the licensees of the Managed Stations. Subsequent to assignment of the licenses, DLB will continue to make available permanent free radio communications service to the licensees of the Managed Stations.

EB Exh. 17 at 7. Based on this asserted "consideration," the response declined to discuss further the circumstances under which DLB obtained consent to the assignments. In fact, as the record shows, there was no consideration for the assignments. Lutz⁴⁰ and the Sumpters requested that the stations be transferred out of their names. Ronald transferred O.C.'s station on his own initiative. The statement in the response is thus false and misleading.

73. The April 5, 1999 response to the Commission's March 4, 1999 letter of inquiry contains additional false and misleading statements. The response purports to describe the process by which Ronald identified and selected the applicants. The response states:

Mr. Brasher's actions were limited to those . . . who would agree to participate in the ownership, licensing and operation of the subject stations, including without limitation, performance of all duties attendant to holding an FCC license. Persons

⁴⁰ Tr. 1173.

who were either unable or unwilling to perform such duties were not considered by Mr. Brasher. . . .

. . . each prospective licensee must have been willing to agree to participate fully in the operation of the facilities, including without limitation, a willingness to accept risk of failure of any enterprise arising out of the operation of a business based on obtaining the requisite license and construction of the licensed facilities. Therefore, the criteria for the creation of an ongoing relationship to manage facilities was: (i) the person must have been known to Mr. Brasher; (ii) the person must be able to fulfill the duties of a Commission licensee; (iii) the person must have been willing to fulfill the duties of a Commission licensee; (iv) the person must have been willing to participate in the funding of the construction of the facilities; (v) the person must have been willing to participate in the funding of the costs of operation; (vi) the person must have been willing to accept the risk of failure of any business arising out of operation of the facilities; and (vii) the person must have been willing to actively participate in the sale of service and equipment to be provided to customers of the subject station. Person who did not evidence either the ability or the willingness to perform each of these tasks were not allowed to participate in any managed station agreement.

EB Exh. 19 at 000003-000004. The record totally fails to support this assertion as the ALJ's findings, which we adopt, indicate. It shows that Ronald simply selected close relatives to be licensees and either did not consult them at all or merely asked them to sign applications as an accommodation so that he could avoid the restrictions of section 90.313. The record similarly contradicts the following statements: (1) "The Sumpters were informed of the duties that their participation would require and the potential benefits of ownership which might be obtained by the Sumpters if the facilities were successful. . . ." ⁴¹; (2) ". . . Ms. Lutz would be entitled to all benefits of operation as a Commission licensee, including that portion of all profits . . . that would arise out of operation of the facilities" ⁴²; and (3) "[With the exception of the Sumpters] All other licensees participating in management agreements with DLB have provided substantial direction and supervision regarding the operation of the subject facilities." ⁴³

74. Finally, Ronald's October 31, 1999 response, in addition to its statement about O.C., contains the following statement about Ruth's application:

Ronald D. Brasher contracted with John Black . . . in order to prepare the application resulting in the license for station WPJR762. This application was prepared simultaneously with an application in the name of Ronald D. Brasher. . . . The two applications were placed in the same envelope and mailed to PCIA for frequency coordination on July 1, 1995. The intent of [the Bearden] application was to create a license in the name of a corporation for which Ruth I. Bearden was formally the principal. Due to an error in the preparation of the application at issue and the similarities that exist between the names of Ronald Brasher's late

⁴¹ EB Exh. 19 at 00004.

⁴² EB Exh. 19 at 00005.

⁴³ EB Exh. 19 at 00005.

mother and this entity, the license was applied for in the name of the individual instead of the corporate entity that was the intended recipient of the license. Immediately upon learning of the error in the name of the entity applying for the license, Ronald Brasher contacted the frequency coordinator in an attempt to cancel the application here at issue Subsequent to this request to halt the processing of this application, the license was issued. Ronald Brasher immediately contacted the Commission by telephone, requesting that the license . . . be cancelled.

As our previous discussion indicates, Ruth's application was filed in 1996 not in 1995. Moreover, the discussion in the response is totally inconsistent with Ronald's hearing testimony, which indicates that Ronald filed Ruth's application at the request of Ed Bearden and that he sought to cancel the application after Ed told him that it was no longer needed. The statement that Ronald attempted to cancel the license after it was issued is inconsistent with his hearing testimony that he was unaware that the license had issued.

Conclusion

75. Exceptions. Appellants assert that the record in this case does not warrant disqualification. They state:

. . . the record demonstrates fully that an unsophisticated person, Ron Brasher, believed that his actions were lawful and did nothing to conceal the methods he chose to obtain additional channels for DLB. Each of the applications clearly showed commonality. He executed the 800A for the O.C. Brasher Estate license by indicating that the license was to held by the estate. The Defendants responded fully and honestly to each of the WTB's inquiries, provided thousands of copies of documents pursuant to discovery, participated openly in the discovery process, and answered with great effort an enormous amount of questions at hearing, even where the answers were known to be unhelpful to their case.

The Defendants do not contend that their actions were entirely appropriate or that the manner by which they chose to license facilities was in strict accord with the agency's rules and policies. Errors of an administrative nature, assumptions regarding acceptable licensing methods, failure to reduce to writing management agreements, etc. thread throughout the history of this matter.

Exceptions of Ronald Brasher at 22 ¶¶ 45-46. Appellants indicate that Ronald and Patricia are willing to exit the radio business but ask that Metroplex not be "ruin[ed]," creating hardship for employees and customers. Exceptions of Ronald Brasher at 23 ¶ 47.

76. Analysis. The record in this case is totally at odds with Appellants' characterization. Ronald, Patricia, and Metroplex committed egregious misconduct, not "errors of an administrative nature." They were the undisclosed real parties-in-interest in applications that they instigated and filed in the names of relatives. They exercised control over the resulting licenses without Commission authorization in violation of 47 U.S.C. § 310(d). These activities

constituted an abuse of process inasmuch as they were intended to conceal from the Commission that Metroplex was applying for licenses in excess of the limitations of 47 C.F.R. § 90.313(c). Moreover, these activities were accompanied by numerous instances of misrepresentation and lack of candor. The signatures on the O.C. Brasher and Ruth Bearden applications falsely represented that O.C. and Ruth had signed the applications and, by implication, that they were living persons. The signatures on the Sumpter applications falsely indicated that the Sumpters had signed them and had approved their filing. The opposition to the Net Wave petition and the responses to the Commission letters of inquiry falsely represented that the various applicants/licensees were the real parties-in-interest in the applications and that they exercised control and supervision over the stations. They further falsely represented that Ronald had chosen the applicants because they were ready and willing to exercise their responsibilities as licensees and that the licensees transferred the stations to Metroplex in return for consideration. The record indicates that Ronald and Patricia testified falsely at the hearing about their dealings with the Sumpters.⁴⁴ Intentional misconduct of this nature and magnitude fully warrants disqualification. See, e.g., Marc Sobel, 17 FCC Rcd 1872 (2002).

IV. ORDERING CLAUSES

77. ACCORDINGLY, IT IS ORDERED, That the Requests for Oral Argument, all filed September 22, 2003, by Ronald Brasher, Patricia Brasher, and DLB Enterprises, Inc. ARE DENIED.⁴⁵

78. IT IS FURTHER ORDERED, That the Exceptions of Ronald Brasher, the Exceptions of Patricia Brasher, and the Exceptions of DLB Enterprises, Inc., all filed September 8, 2003, ARE DENIED, and that the Initial Decision of Administrative Law Judge Arthur I. Steinberg, FCC 03D-02 (Aug. 8, 2003), 18 FCC Rcd 16707 (ALJ 2003) IS AFFIRMED.

79. IT IS FURTHER ORDERED, That the licenses of Ronald Brasher for Private Land Mobile Stations WPLQ202, KCG967, WPLD495, WPKH771, WPKI739, WPKI733, WPKI707, WIL990, WPLQ475, WPLY658, WPKY903, WPKY901, WPLZ533, WPKI762, and WPDU262, Dallas/Fort Worth, Texas, ARE REVOKED.

80. IT IS FURTHER ORDERED, That the licenses of Patricia Brasher for Private Land Mobile Stations WPJI362, WPKY900, and WPLD570, Dallas/Fort Worth, Texas, ARE REVOKED.

81. IT IS FURTHER ORDERED, That the license of O.C Brasher for Private Land Mobile Station WPJR761, Dallas/Fort Worth, Texas, IS REVOKED.

82. IT IS FURTHER ORDERED, That the licenses of Metroplex Two-Way Radio Service for Private Land Mobile Stations WPHS735, WPKP673, WPKM797, WPLZ841, and WPJR754, Dallas/Fort Worth, Texas, ARE REVOKED.

⁴⁴ We wish to make clear, however, that even if we were to overturn the ALJ's findings crediting the testimony of the Sumpters, this would not significantly diminish the seriousness of the misconduct found on the record as a whole.

⁴⁵ We have determined that oral argument would not materially assist the resolution of this proceeding.

83. IT IS FURTHER ORDERED, That the licenses of DLB Enterprises, Inc., for Private Land Mobile Stations WPKM796, WPKL830, WPJY510, WPLU490, WPBH830, WPKP667, WPLY713, WPMH354, WPMH477, and WPKY978, Dallas/Fort Worth, Texas, and WNAH223, Cleora, Oklahoma, ARE REVOKED.

84. IT IS FURTHER ORDERED, That the licensees listed above ARE AUTHORIZED to continue operation of their stations until 12:01 A.M. on the ninety-first day following the release date of this decision to enable the licensees to conclude the stations' affairs; PROVIDED, HOWEVER, that if the licensees seek reconsideration or judicial review of our action revoking their licenses, they are authorized to operate the stations until final disposition of all administrative and/or judicial appeals.

85. IT IS FURTHER ORDERED, That the applications of DLB Enterprises, Inc., for Conventional Industrial/Business Private Land Mobile Licenses, Dallas, Texas, File Nos. AO17774, AO20241, and AO19157, ARE DENIED.

86. IT IS FURTHER ORDERED, That the application of DLB Enterprises, Inc., for Conventional Industrial/Business Private Land Mobile Licenses, Crowley, Texas, File No. AO18555, IS DENIED.

87. IT IS FURTHER ORDERED, That the application of DLB Enterprises, Inc., for Trunked Industrial/Business Private Land Mobile Licenses, Crowley, Texas, File No. AO20755, IS DENIED.

88. IT IS FURTHER ORDERED, That the application of DLB Enterprises, Inc., for Assignment of Private Land Mobile Stations from Ronald Brasher (WPKI707, WPKI739, WPKI733, and WPLQ475), D.L. Brasher (WPJR750), David Brasher (WPJR757), Metroplex Two-Way Radio Service (WPJR754), and O.C. Brasher (WPJR761), Dallas, Texas, File No. D113240, IS DENIED.

89. IT IS FURTHER ORDERED, That, in light of the cancellation of the licenses of Norma Sumpter, Jim Sumpter, Jennifer Hill, and Melissa Sumpter, those portions of the application of DLB Enterprises, Inc., pertaining to the Assignment of Private Land Mobile Stations from Norma Sumpter (WPJR739), Jim Sumpter (WPJR725), Jennifer Hill (WPJR740), and Melissa Sumpter (WPJS437), Dallas, Texas, File No. D113240, ARE DISMISSED as moot.

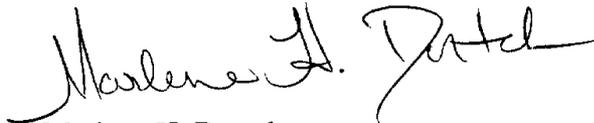
90. IT IS FURTHER ORDERED, That the application of DLB Enterprises, Inc., for Assignment of Private Land Mobile Station, File No. D113242, IS DENIED.

91. IT IS FURTHER ORDERED, That the application of DLB Enterprises, Inc., for Modification of Private Land Mobile Stations WPKM796, and WPKL830, and 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, File No. D113241, IS DENIED.

92. IT IS FURTHER ORDERED that a copy of this order shall be sent by certified mail, return receipt requested, to Ronald Brasher, Patricia Brasher, and DLB Enterprises, Inc., 224 Molina Drive, Sunnyvale, Texas 75182, with a copy to Robert H. Schwaninger, Jr., Schwaninger & Associates, P.C., 1331 H Street, N.W., Suite 500, Washington, D.C. 20005.

93. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script that reads "Marlene H. Dortch". The signature is written in black ink and is positioned above the printed name and title.

Marlene H. Dortch
Secretary