

Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

13. *It is further ordered* that the Office of Public Affairs, Reference Operations Division of the Commission send a copy of this Order by Certified Mail—Return Receipt Requested to: Mark A. Rabenold, 960 Swanson Mill Road, Tonasket, Washington 98855.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-12812 Filed 5-12-98; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 98-64]

Order To Show Cause and Notice of Opportunity for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission will hold a hearing to determine whether to issue a Cease and Desist Order, and whether a forfeiture will be imposed for the unlicensed operation of a radio station in violation of the Communications Act in docket case CI 98-48.

DATES: Prehearing on May 21, 1998, 9:00 am; Hearing on June 23, 1998, 10:00 am.

ADDRESSES: All pleadings and papers must be mailed to Office of the Secretary, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, Hearings held at Offices of the Commission.

FOR FURTHER INFORMATION CONTACT: Norman Goldstein and James Shook, Mass Media Bureau, (202) 418-1430, e-mail ngoldste@fcc.gov and jshook@fcc.gov

SUPPLEMENTARY INFORMATION:

Released: April 6, 1998.

1. The Commission has under consideration information concerning the transmission of radio signals without a license by Jerry Szoka ("Szoka"). For the reasons that follow, we order Szoka to show cause, pursuant to Section 312(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. 312(c), why we should not issue a cease and desist order which prohibits further unauthorized transmissions on his part. Also, pursuant to Section 1.80(g) of the Commission's Rules (the "rules"), 47 CFR 1.80(g), this order constitutes a notice of opportunity for hearing to determine whether, in addition to or as an alternative to the issuance of a cease

and desist order, a forfeiture should be imposed for violations of the Act and the rules.

2. Background. On November 4, 1996, James A. Bridgewater ("Bridgewater"), the Detroit Field Office Director of the Commission's Compliance and Information Bureau, received information from Mark Krieger, Chairman of the Society of Broadcast Engineers, concerning an unauthorized radio station operating as "The Grid," on 96.9 MHz. On February 20, 1997, Bridgewater sent a letter under his signature by certified mail to "The Grid." In pertinent part, the letter stated:

Unlicensed operation is a violation of Section 301 of the Act, 47 U.S.C. 301, and may subject the operator to substantial monetary fines, in rem forfeiture action, and criminal sanctions including imprisonment. See 47 U.S.C. 401, 501, 503, 510. Because unlicensed operation creates a danger of interference to important radio communications services and may subject the operator to severe penalties, we emphasize the importance of complying strictly with the legal requirements mentioned above. Operation of radio transmitting equipment without proper authority granted by the Commission should *cease immediately*. (Emphasis in the original).

The letter also informed "The Grid" that a response was required within 15 days of receipt of the letter. On March 31, 1997, the Commission received an unsigned reply dated March 26, 1997, from Szoka, in which he acknowledged receipt of Bridgewater's letter and stated that he would take necessary actions to meet FCC requirements. He also urged the Commission to ignore the unlicensed operation because the station is top quality, provides a much needed community service without commercials, and is not interfering with other stations.

3. On June 11, 1997, Bridgewater sent Szoka a second warning letter regarding the unlicensed operation on 96.9 MHz. That letter also required a reply within 15 days of receipt. Commission records reveal no response from Szoka.

4. Between June 18, 1997, and September 9, 1997, the Commission received four additional complaints regarding the unlicensed broadcast operation at 96.9 MHz. Each complaint indicated that unauthorized transmissions were continuing.

5. On September 11, 1997, FCC Agents Patrick G. Patterson ("Patterson") and Paul S. Mako ("Mako") drove to Cleveland, Ohio, in a Commission mobile direction finding vehicle. At approximately 5:10 p.m., Patterson and Mako positively identified the location of the transmitted signal as emanating from 1281 West 9th

Street, Cleveland, Ohio. This address is the location of "The Grid," a commercial night club. Patterson and Mako observed that the transmitting antenna was located at the top of the 4 1/2 story building on the north side and approximately half way between the front and back of the building. Patterson and Mako also determined that the coaxial cable connected to the antenna entered the building housing the establishment known as "The Grid." The agents took a field strength measurement of the signal identified as "The Grid." The measurement was made approximately 171 meters (561 feet) from the transmitting antenna and recorded a value of 35.55 millivolts/meter (33,550 microvolts/meter). This measurement far exceeds the limit set out in Section 15.239(b) of the rules, 47 CFR 15.239(b), which allows unlicensed operation of a low power radio transmitter in the FM broadcast band provided the signal level is below 250 µV/m at a distance of 3 meters. The 96.9 FM signal was also monitored via the direction finding vehicle's normal AM/FM radio by Patterson and Mako while exiting the Cleveland area and heading west on I-90. The signal could be heard for approximately 18.6 miles. On Friday, March 19, 1998, at 4:57 pm, FCC Agent Patterson confirmed that the station was still operating.

6. Discussion. Section 301 of the Act, 47 U.S.C. 301, provides in pertinent part: It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission. * * * No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State * * * to another place in the same State * * * except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Anyone transmitting radio transmissions in the United States must have authority from the Commission to do so. See *U.S. v. Medina*, 718 F. Supp. 928 (S.D. Fla. 1989); *U.S. v. Weiner*, 701 F.Supp. 15 (D.Mass. 1988), *aff'd*, 887 F.2d 259 (1st Cir. 1989); *Stephen Paul Dunifer*, 11 FCC Rcd 718, 720-21, ¶¶ 7-9 (1995) (regarding Commission's licensing requirement); and *Order to Show Cause and Notice of Apparent Liability*, 50 FR 20603, published May 17, 1985 (Alan H. Weiner). As the facts recited above reflect, it appears that Szoka has violated and may currently be violating Section 301 of the Act.

Ordering Clauses

7. Accordingly, It Is Ordered that, pursuant to Section 312(c) of the Act,

Jerry Szoka Is Directed To Show Cause why he should not be ordered to Cease And Desist from violating Section 301 of the Act, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

a. To determine whether Jerry Szoka has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.

b. To determine whether, based on the evidence adduced pursuant to the preceding issue, Jerry Szoka should be ordered to cease and desist from violating Section 301 of the Act.

8. *It Is Further Ordered* that, pursuant to Section 312(d) of the Act, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Compliance and Information Bureau with respect to issues a and b.

9. *It Is Further Ordered* that this Order to Show Cause shall constitute a Bill of Particulars with respect to all foregoing issues.

10. *It Is Further Ordered* that, to avail himself of the opportunity to be heard, Jerry Szoka, pursuant to Sections 1.91(c) of the rules, in person or by attorney, shall file in triplicate with the Commission within twenty (20) days of the mailing of this Order, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in this Order.

11. *It Is Further Ordered* that, without regard as to whether the hearing record warrants an order that Jerry Szoka cease and desist from violating the Act or the rules, it shall be determined, pursuant to Section 503(b) of the Act, whether an Order For Forfeiture in an amount not to exceed \$11,000¹ shall be issued against Jerry Szoka for the alleged violations of Section 301 of the Act.

12. *It Is Further Ordered* that in connection with the possible forfeiture liability noted above, this document constitutes a notice of opportunity for hearing pursuant to Section 503(b) of the Act and Section 1.80 of the rules.

13. *It Is Further Ordered* that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record appearing on behalf of the Chief, Compliance and Information Bureau. Parties may inquire as to the identity of such counsel by calling the Compliance and Information

Bureau at (202) 418-1100, TTY (202) 418-2544. Such service shall be addressed to the named counsel of record, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

14. *It Is Further Ordered* that the Office of Public Affairs, Reference Operations Division of the Commission send a copy of this Order by Certified Mail—Return Receipt Requested to: Jerry Szoka, The Grid, 1281 West 9th Street, Cleveland, Ohio 44113.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98-12814 Filed 5-12-98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 6, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

Federal Communications Commission.

OMB Control No.: 3060-0330.

Expiration Date: 04/30/2001.

Title: Part 62 - Applications to Hold Interlocking Directorates.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 10 respondents; 2 hour per response (avg.); 20 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Description: Persons seeking to hold interlocking positions with more than one carrier subject to the Communications Act of 1934, as amended, where any carrier sought to be interlocked has been found by the Commission to have market power and is defined as a dominant carrier or where any carrier has not yet been

found to be non-dominant, except for cellular licensees in different geographic markets must file an application pursuant to 47 CFR Part 62. The collection of information is authorized by 47 U.S.C. Section 212. Congress mandated information collection under 47 U.S.C. Section 212 to be conducted by the Federal Communications Commission to monitor the effect of interlocking directorates on the telecommunications industry and to ensure they will not have any anticompetitive impact. Part 62 of the Commission's Rules and Regulations implements the statute. The information is used by Commission staff to deter anticompetitive practices. Obligation to respond: Mandatory.

OMB Control No.: 3060-0807.

Expiration Date: 04/30/2001.

Title: 47 CFR Section 51.803 and Supplementation Procedures for Petitions to Section 252(e)(5) of the Communications Act of 1934, as amended.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 52 respondents; 39.23 hour per response (avg.); 2040 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Description: Any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act shall notify the Commission as follows: (1) file with the Secretary of the Commission a detailed petition, supported by an affidavit, that states with specificity the basis for any claim that it has failed to act; and (2) serve the state commission and other parties to the proceeding on the same day that the party serves the petition on the Commission. Within 15 days of the filing of the petition, the state commission and parties to the proceeding may file a response to the petition. See 47 U.S.C. Section 252 and CFR Section 51.803. In a Public Notice (DA 97-2256), the Commission set out procedures for filing petitions for preemption pursuant to section 252(e)(5) of the Communications Act of 1934, as amended. Section 252(e)(5) provides that "[i]f a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall

¹ This figure reflects the maximum appropriate forfeiture amount in light of the specific facts at issue. See 47 U.S.C. 503(b)(2)(C); 47 CFR §§ 1.80(b)(3), (b)(4), (b)(5); see also *In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997)(petitions for reconsideration pending).