

Arnold again was advised that operation of the radio station violated federal law, and he was ordered to cease operations. Arnold shut the station off at 1:02 pm, as the agents were leaving. Subsequently, by letter dated August 25, 1997, Carpenter alleged that Arnold had resumed broadcasting on 95.3 MHz. On September 9, 1997, Carpenter telephoned District Director Anderson in the CIB Seattle Field Office, reiterating his complaint that Arnold's unlicensed transmissions were continuing. On March 21, 1998, at 10:00 am, Roberson confirmed that Arnold's transmissions were in fact continuing and that the signal levels far exceeded Part 15 limits.

**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 47 U.S.C. § 301; *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 Arnold 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, Lewis B. Arnold 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:

1. To determine whether Lewis B. Arnold has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.
2. To determine whether, based on the evidence adduced pursuant to the preceding issue, Lewis B. Arnold 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 Communications Act of 1934, as amended, 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 1 and 2.

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, Lewis B. Arnold, pursuant to Sections 1.91(c) of the Commission's 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 Lewis B. Arnold cease and desist from violating the Act or the rules, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an Order For Forfeiture in an amount not to exceed \$11,000<sup>3</sup> shall be issued against Lewis B. Arnold 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 Communications Act of 1934, as amended, and Section 1.80 of the Commission's 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

<sup>3</sup>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).

of this Order by Certified Mail—Return Receipt Requested to: Lewis B. Arnold, N 103 4th Street East, 2741 Flowery Trail Road, Chewelah, Washington 99109.

Also forward to: Lewis B. Arnold, The Independent, P.O. Box 5, Chewelah, Washington 99109.

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

[FR Doc. 98-12811 Filed 5-12-98; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[FCC 98-62]

### 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 98-46.

**DATES:** Prehearing on May 20, 1998, 9:00 am; Hearing on June 30, 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 Keith Perry's transmission of radio signals without a license. For the reasons that follow, we order Keith Perry 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 C.F.R. § 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 March 24, 1997, the Compliance and Information Bureau's (CIB) Dallas Field Office received a complaint from the Texas Association of Broadcasters concerning an unauthorized radio station operating on 88.5 MHz, northwest of Austin, Texas. On June 6, 1997, Loyd P. Perry ("Agent Perry"), the Houston, Texas, resident agent of the CIB and CIB Dallas Field Office Director James D. Wells ("Agent Wells") were on duty in the Austin, Texas, area in a mobile automatic direction finding (MADF) vehicle. Agents Perry and Wells detected a radio signal on the frequency 88.5 MHz in the area of north Austin. Further monitoring led Agents Perry and Wells to determine that the signal originated from a vertical beam antenna mounted on a tower on the rear of the residence located at 607 Osage Drive, Leander, Texas, over fifteen miles from the location Agents Perry and Wells first detected the signal. Because the radio station utilized an external antenna over fifty feet in height and the signal could be received over fifteen miles away, Agents Perry and Wells concluded that the radio transmitting equipment exceeded the lower power limits set forth in Part 15 of the rules, 47 CFR § 15.239(b).

3. At approximately 12:47 p.m., Agents Perry and Wells approached the residence identified above. Leander Police Officer Tim Meaner was on hand to assist if necessary. Keith Perry identified himself as owner of the residence. Mr. Keith Perry admitted the operation of radio transmitting equipment at the residence, but refused entry into the residence. After a lengthy conversation, Keith Perry directed Agents Loyd Perry and Wells to a window at the east side of the residence where the agents were allowed to view the transmitting equipment.

4. Agents Perry and Wells observed a satellite dish mounted on the exterior of the house and audio cables from an unknown source, feeding into a small transmitter. Keith Perry stated that the cables provided audio from a satellite source received by the satellite dish on the residence. The transmitter, in turn, fed into another small transmitter, with cables leading to the vertical beam antenna located on a tower approximately sixty feet high, mounted at the rear of the residence. Agent Perry conducted radio frequency power measurements at the output of the transmitter, using an in-line wattmeter. Forward power was measured at 30 watts, reflected power at 2½ watts. Agents Perry and Wells concluded that

the use of that amount of power and the use of an external antenna exceeded the limits set forth in part 15 of the rules, 47 CFR 15.239(b).

5. Keith Perry stated that he began operating the station in February 1997. He voluntarily disconnected the power to the transmitter during the inspection. Upon their return to the MADF vehicle, Agents Perry and Wells confirmed that the signal earlier detected was no longer present on the unit's receiving equipment.

6. On June 25, 1997, Agent Perry sent a letter under his signature by certified mail to Keith Perry.<sup>1</sup> In pertinent part, the letter stated:

Radio transmitting equipment (other than certain low powered devices operated in accordance with Part 15 of the Rules) may be operated only upon issuance by this Commission of a station license covering such equipment. 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 these legal requirements. Operation of radio transmitting equipment without proper authority granted by the Commission should cease immediately. (emphasis in the original).

7. The letter informed Keith Perry that he need not reply but, if desired, he could submit relevant information to the Commission's Houston Field Office. On July 24, 1997, Keith Perry submitted a written response to the warning letter. Keith Perry argued that: the FCC has no power to regulate FM broadcast stations operating with transmitter power of less than 100 watts; Agents Perry and Wells trespassed on his property and illegally parked their vehicle in front of his home; the FCC has no authority to inspect unlicensed stations; Agent Perry had no authority to operate the transmitter while conducting his tests; the agents slandered Keith Perry to the Leander Police Department; and insufficient postage was placed on the warning letter.

8. On August 29, 1997, Agent Perry was on duty in Austin, Texas, in a MADF vehicle. Agent Perry detected a radio signal on the frequency 95.9 MHz in the area of north Austin. Further monitoring led Agent Perry to conclude that the signal originated from a vertical

beam antenna mounted on a tower on the rear of the residence located at 607 Osage Drive, Leander, Texas. No contact was made with Keith Perry at that time. On March 20, 1997, using direction finding techniques, Agent Perry confirmed that Keith Perry was continuing to operate.

9. 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 Keith Perry has violated and may currently be violating Section 301 of the Act.

#### Ordering Clauses

10. Accordingly, *It is ordered* that, pursuant to Section 312(c) of the Act, Keith Perry 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:

1. To determine whether Keith Perry has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.

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

11. *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 1 and 2.

12. *It is further ordered* that this Order to Show Cause shall constitute a Bill of Particulars with respect to all foregoing issues.

<sup>1</sup> The June 25, 1997, letter mistakenly asserted that Keith Perry had transmitted on 87.9 MHz. By letter dated September 26, 1997, Agent Perry corrected the frequency referenced to reflect transmission on 88.5 MHz.

13. *It is further ordered* that, to avail himself of the opportunity to be heard, Keith Perry, pursuant to Section 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.

14. *It is further ordered* that, without regard as to whether the hearing record warrants an order that Keith Perry 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 \$11,000<sup>2</sup> shall be issued against Keith Perry for the alleged violations of Section 301 of the Act.

15. *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.

16. *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.

17. 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:

Keith Perry, 607 Osage Drive,  
Leander, Texas 78641.

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

[FR Doc. 98-12813 Filed 5-12-98; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[FCC 98-60]

### 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 98-44.

**DATES:** Prehearing on May 19, 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 Office 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 Joseph Frank Ptak ("Ptak"). For the reasons that follow, we order Ptak 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 rules.

2. *Background.* On April 9, 1997, Loyd P. Perry ("Perry"), one of the Houston, Texas, resident agents of the Commission's Compliance and Information Bureau ("CIB"), received information from the San Marcos (Texas) Police Department concerning an unauthorized radio station operating on 105.9 MHz. Perry and CIB Dallas Director James D. Wells ("Wells") proceeded to the San Marcos area in mobile automatic direction finder ("MADF") unit FC-660. About 10 miles south of San Marcos, Perry and Wells

detected a radio signal on 105.9 MHz, which increased in strength as they approached San Marcos. Further monitoring led Perry and Wells to conclude that the signal originated from a vertical dipole antenna mounted on a tower situated on the grounds of a residence located at 505 Patricia Drive, San Marcos. Further, considering the height above ground of the antenna and the distance from the antenna to the location where they first detected the signal, Perry and Wells concluded that the signal strength exceeded 250  $\mu$ V/m at 3 meters, the limit for unlicensed operation as set forth in Section 15.239(b) of the rules, 47 CFR 15.239(b).

3. At approximately 3:18 p.m., Perry and Wells heard a signal identified as "KIND" on 105.9 MHz. At approximately 3:29 p.m., Perry and Wells, accompanied by San Marcos Police Officer Royce Smith, entered upon the property at 505 Patricia Drive and asked to speak with the owner. Ptak identified himself as such. Perry then requested permission to inspect the radio transmission equipment to which Ptak granted his request.

4. In a bedroom of the residence, Perry and Wells observed a transmitter with a cable exiting a window. The cable, in turn, was connected to a vertical dipole antenna mounted on a 25 to 30 foot tower adjacent to the rear of the residence. An unconnected wattmeter was located next to the transmitter. Ptak then acknowledged the following: (1) There is no license for the facilities; (2) the transmitter output was 30 watts; (3) operation had begun on March 26, 1997, and had continued 24 hours per day since March 26; and (4) the station was operated by the Hayes County Guardian newspaper and staffed with volunteers. Perry, thereupon, orally advised Ptak that operation of the radio station violated federal law, and he ordered Ptak to cease operations. Ptak refused. Thereafter, at 4:00 p.m. on April 9, Perry and Wells again identified the source of a signal on 105.9 MHz as the facilities observed at 505 Patricia Drive.

5. On April 17, 1997, Perry sent a letter under his signature by certified mail to Ptak. In pertinent part, the letter stated:

Operation of radio transmitting equipment, other than certain low powered devices operated in accordance with Part 15 of the Rules, may be operated only upon issuance by this Commission of a station license. 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

<sup>2</sup>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).