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

In the Matter of	)	
	)	
Biennial Regulatory Review -- Amendment of	)	
Parts 0, 1, 13, 22, 24, 26, 27, 80,	)	WT Docket No. 98-20
87, 90, 95, 97, and 101 of the Commission's Rules	)	
to Facilitate the Development and Use of the	)	
Universal Licensing System in the Wireless	)	
Telecommunications Services	)	
	)	
Amendment of the Amateur Service Rules to	)	WT Docket No. 96-188
Authorize Visiting Foreign Amateur Operators	)	
to Operate Stations in the United States	)	RM-8677
	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 1, 1999 **Released: June 9, 1999**

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

I. INTRODUCTION

1. The Personal Radio Steering Group, Inc., ("PRSG") has requested a stay of the effective date of certain rule changes that went into effect on February 12, 1999, in connection with the captioned docket.[1] On January 13, 1999, PRSG filed a Petition for Stay of the effective date of the rules pertaining to 47 C.F.R. Part 95, Subpart A, until the issues raised in its Petition for Reconsideration are addressed.[2] The Petition for Stay is granted in part and denied in part for the reasons which follow.

---

[1] Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20; Amendment of the Amateur Service Rules to Authorize Visiting Foreign Amateur Operators to Operate Stations in the United States, WT Docket No. 96-188, RM-8677, *Report and Order*, FCC 98-234, (released October 21, 1999), 63 Fed. Reg. 68904 (December 14, 1998) ("*ULS Report and Order*").

[2] Subsequently, five commenters filed pleadings explicitly supporting PRSG's Petition for Stay and requesting that the Commission stay implementation of the rules adopted in this docket. Comments of Kerry D. Cochran, Lester Chew, Robert Reichel, Alan S. Wiel, and H. Phillips Henderson, Jr., on behalf of Blackberry REACT, Inc. These pleadings simply reference the PRSG filing and present no additional justifications for a grant of a stay. Our resolution of PRSG's Petition renders these additional requests moot. In addition, as part of its comments filed Feb. 12, 1999, Southwestern REACT of San Diego County, Inc., (Southwestern REACT) informally requested that the Commission stay the effectiveness of the rules adopted in this docket until May 12, 1999. Because Southwestern REACT's comments exclusively address matters raised by PRSG in its Petition for Stay, we believe that our resolution of PRSG's Petition sufficiently addresses Southwestern REACT's concerns.

II. BACKGROUND

2. In the *ULS Report and Order*, we consolidated, revised, and streamlined our rules governing license application procedures for radio services licensed by the Wireless Telecommunications Bureau (WTB or Wireless Bureau).[3] These rule changes will enable full implementation of the Universal Licensing System (ULS), the Commission's new automated licensing system and integrated database for wireless services.[4] We also established procedures to ensure a smooth transition from the pre-existing licensing processes to the processes developed for ULS. In the *ULS Report and Order*, we noted that the development of ULS provided an opportunity to simplify and streamline the Commission's Rules in other ways as well. Thus, we consolidated the wireless radio services licensing rules in a single section of Part 1, to the extent practicable, and eliminated dozens of corresponding duplicative rules in other service-specific rule parts. In addition to proposing rule changes needed to fully deploy ULS, we also streamlined or eliminated technical data collection requirements in some services, and significantly streamlined the rules for the General Mobile Radio Service ("GMRS").

3. The GMRS, a Part 95 Personal Radio Service, was originally established as the Citizens Class A Radio Service, and was allocated for use by individuals and entities who were not eligible for licensing in the public safety, industrial, and transportation services. We took the opportunity to re-evaluate GMRS in the context of the ULS proceeding in order to identify and eliminate regulations that have become unnecessary in the past decade.[5] We also sought to adopt changes to ensure that the streamlined licensing process collects the minimum information needed of GMRS licensees and applicants consistent with our statutory responsibilities to license and regulate the use of this service.[6] We neither altered eligibility requirements, permitted communications, the frequency allocation nor other rules that could fundamentally alter the purpose of GMRS. Further, we found that the effect of these rule changes will actually increase users' flexibility in using GMRS and will promote use of the service.[7]

---

[3] WTB licenses the following Commercial Mobile Radio Services (CMRS) and Private Mobile Radio Services (PMRS): Personal Communications Service (PCS), Cellular Radiotelephone Service (Cellular), Public Mobile Services other than cellular (*i.e.*, Paging and Radiotelephone, Rural Radiotelephone, Offshore Radiotelephone, Air-Ground Radiotelephone), Specialized Mobile Radio Service (SMRS), Wireless Communications Service (WCS), Local Multipoint Distribution Service (LMDS), Fixed Microwave Services, Private Land Mobile Radio Services (PLMRS), Maritime Services, Aviation Services, Amateur Radio Services, and Personal Radio Services. Additionally, WTB processes applications for the Broadcast Auxiliary Service (pursuant to an agreement with the Mass Media Bureau), requests by tower owners for Antenna Structure Registrations (FCC Form 854), and requests for Restricted and Commercial Radio Operator Licenses.

[4] *ULS Report and Order*, ¶ 1.

[5] In PR Docket No. 87-265, the Commission adopted changes to the GMRS to make the service more efficient and effective for personal users. *See* Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (GMRS), *Report and Order*, 3 FCC Rcd. 6554, 6562, ¶ 72 (1988) (*GMRS Report and Order*).

[6] *ULS Report and Order*, ¶ 183.

[7] *ULS Report and Order*, ¶ 185.

III. DISCUSSION

4. *Standard for Issuance of a Stay of Commission Rules.* Although the Commission has declined to encode a single evidentiary standard for requests for injunctive relief,[8] we generally consider the four criteria set forth in *Virginia Petroleum Jobbers Ass'n v. FPC*[9] to evaluate requests for interim relief.[10] These criteria are: (1) a likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) that the issuance of the order will further the public interest. A balancing of these interests then will be conducted in order to fashion an administrative response on a case-by-case basis; moreover, there is no requirement that there be a showing as to each single factor. If there is a particularly overwhelming showing in at least one of the factors, we may find that a stay is warranted notwithstanding the absence of another one of the factors.[11]

5. *PRSG Petition for Stay.* In its Petition for Stay, PRSG argues that its Petition for Reconsideration is likely to prevail on the merits, that it will suffer irreparable harm if a stay is not granted, that other interested parties would not be harmed by the stay, and that the public interest favors grant of a stay. We find that PRSG has made a showing that a stay is appropriate with regard to one of the issues it raises, and we clarify the rules with regard to another one of the issues PRSG raises, but we deny its request for a stay as to the remainder of its issues.[12]

6. PRSG argues that language retained in Section 95.29(e) has the effect of damaging the very result it was intended to effectuate. In particular, PRSG argues that if the 462/467.675 MHz frequency pair is reserved only for travellers' assistance or emergency use as specified by the rules adopted in the ULS proceeding, the effect will be to remove the availability of repeaters across the country. This is so, PRSG argues, because the new rules' effectiveness would require individuals using mobile units to discontinue use on the 462/467.675 MHz band immediately for purposes other than traveller's assistance and emergencies. The individuals who use this channel for their mobiles have constructed repeaters operating on the 462/467.675 MHz band channel nationwide, thus making this channel available for traveller's assistance and emergency use nationwide. It now appears that limiting the channel only to traveller's assistance or emergency use requires these individuals to retune their repeaters to another frequency to conduct their personal and family business. PRSG contends that such a result "would decrease the number of repeaters on the 675 channel pair nationally and would thereby substantially

---

[8] Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers, *Report and Order*, 12 FCC Rcd 22497, 22565-66 (1997).

[9] 259 F.2d 921, 925 (D.C.Cir. 1958).

[10] *AT&T v. Ameritech,* 13 FCC Rcd. 14508 (1998).

[11] *AT&T v. Ameritech* at n.43, *supra*; *see also Southwestern Cable*, 392 U.S. 157, 180 (1968).

[12] We note, however, that in a Public Notice, DA 99-314, released February 10, 1999 ("ULS Implementation Public Notice"), the Commission requested that GMRS applicants, among others, continue to use the old, pre-ULS forms, and to provide the technical information formerly required on the old forms, until their service is converted to the new ULS database.

reduce the viability of this channel pair for emergency and traveller-assistance communications."[13] We are persuaded that the public interest would be served by a further evaluation of the ramifications of adoption of Section 95.29(e) in light of the concerns raised in PRSG's Petition for Reconsideration and Petition for Stay. Accordingly, to avoid the need for current licensees using mobile units on the 462/467.675 MHz band to immediately discontinue other personal use operations in conjunction with repeaters on the 462/467.675 MHz band available for traveller's assistance and emergency use, and to allow the Commission to further evaluate the impact of Section 95.29(e) prospectively rather than after the fact, we find that it is in the public interest to stay Section 95.29(e) pending reconsideration.

7. PRSG also proposes new language for Section 95.29(a) in order to avoid confusion regarding the definition of channel pair and simulcasting. We believe that the addition of new language in the rules is a subject better addressed on reconsideration rather than by a stay order; thus, we decline to grant a stay of this rule for the reasons raised by PRSG. However, on our own motion, and in response to an *ex parte* communication raising an additional concern in connection with this rule section,[14] we clarify that the "licensee" which is the subject of the rule section does not include grandfathered non-individual licensees. The restrictions pertaining to non-individual licensees remain in full force and effect, as specified in Section 95.5 of the Commission's Rules, and as discussed in the *ULS Report and Order*.[15] A grandfathered non-individual licensee may use only the frequency(ies) for which it is currently licensed, and may not expand its operations to additional frequencies. We will consider any grandfathered licensee's use of GMRS frequencies, other than those for which it was specifically licensed when grandfathered, to be a violation of the our Rules prohibiting such licensees to make major modifications to their GMRS systems.

8. With regard to other arguments raised in its Petition for Reconsideration, PRSG has not identified an immediate public interest need to either clarify or stay the operation of the GMRS rules. PRSG makes general arguments that certain of the new rules are confusing or are in contradiction to other established Commission Rules and policies, and that it is in the public interest to stay the alleged improper or confusing rules until its Petition for Reconsideration is addressed. PRSG does not identify, in its Petition for Stay, any specific evidence for its claims that the remainder of the rule changes would have an immediate harm to the public or to licensees. We must balance our conclusion in this regard against the our finding, in general, that the GMRS rule changes will promote the usefulness of GMRS to licensees, while continuing to require them to meet the restrictions pertaining to this service.[16]

9. Accordingly, except as discussed *supra*, we do not find that PRSG has satisfied the

---

[13] PRSG Petition for Reconsideration at § IV.

[14] On February 11, 1999, Mr. Corwin Moore spoke with members of the Public Safety and Private Wireless Division, Policy and Rules Branch, concerning the issues raised in the PRSG Petition for Stay and Petition for Reconsideration. At that time, Mr. Moore pointed out this additional argument regarding the possible interpretation of section 95.29(a) not raised in his Petition for Reconsideration. "Report of Ex Parte Communications," filed on February 19, 1999, by Corwin D. Moore, Jr., Personal Radio Steering Group, Inc.

[15] *ULS Report and Order*, ¶ 190 ("[W]e emphasize that we are not changing the Commission's rules with respect to eligibility for GMRS licenses, and we continue to prohibit non-individual licensees from making major modifications to their systems.")

[16] *ULS Report and Order*, ¶ 184.

requirements for a stay of any other of the ULS rules pertaining to GMRS. First, PRSG has not shown that there is a likelihood of prevailing on the merits of its arguments. Second, PRSG has not shown that harm to the public interest nor to individual licensees will be caused by allowing the GMRS rule changes to go into effect. Third, in view of our goal of increasing the accessibility and usefulness of GMRS to licensees, we find no injury to existing and future licensees caused by implementation of the GMRS rule changes. Fourth, we do not find that it is in the public interest to grant a formal stay of the GMRS rule changes, except, as discussed, for Section 95.29(e).[17]

IV. CONCLUSION

10. We conclude, therefore, on balance, that PRSG has shown that it is in the public interest to stay the effectiveness of Section 95.29(e) of the Commission's Rules, 47 C.F.R. § 95.29(e), in order to avoid the need for individuals to discontinue operations on repeaters which they also make available to the public for traveller's assistance and emergency use. However, with regard to other issues raised in its Petition for Stay, PRSG has not shown hardship or a potential for harm to the public interest that would justify ordering a stay of the effective date of the other GMRS rules. Allowing the remaining rule changes to go forward will not substantially harm either PRSG nor the public; indeed, we believe the public interest is furthered by the ULS rule changes. To the extent that other specific rule changes are challenged on reconsideration, we believe we may consider and address any concerns related to them without issuing a broad stay of the ULS rules. We therefore conclude that a stay will issue as to 47 C.F.R. § 95.29(e), but not as to any other ULS rule change. We have also clarified that grandfathered non-individual users are not eligible to be licensed by rule, as are individual users, for frequencies other than those specified on their licenses at the time they were grandfathered.

V. ORDERING CLAUSES

11. IT IS ORDERED pursuant to Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), that the Petition for Stay filed by the Personal Radio Steering Group, Inc. on January 13, 1999, IS GRANTED IN PART AND DENIED IN PART, as discussed herein, and will be in effect until the Commission resolves the Petitions for Reconsideration of the Report and Order in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

[17] *See* note 12, *supra*.

The OSC also called for a determination, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), of whether an order of forfeiture in an amount not to exceed $11,000 should be issued against Ptak for violations of Section 301.[1]

3. On June 2, 1998, the Compliance and Information Bureau filed a motion for summary decision with the ALJ based on a showing that Ptak was operating a radio station without a license. Ptak did not respond to the Bureau's motion. In his S.D., released July 6, 1998, the ALJ granted the motion for summary decision after determining that the Bureau had "shown by a preponderance of substantial evidence that summary decision is warranted on the issue of the unauthorized operation of an unlicensed radio station and the issuance of a cease and desist order." S.D., ¶¶ 1, 2, 11. The ALJ also held that a forfeiture of $11,000 is appropriate.

4. In a letter dated July 16, 1998 and sent to Chairman William E. Kennard, Ptak asserted that he was formally notifying the FCC of his intent to appeal any decision against him and to formally request that "the FCC reinstate a date for hearing to show cause why a case (sic) and desist order should not be issued to be held after alternative dispute resolution attempts are made." Although Ptak's July 16 letter did not show service on the Bureau and did not otherwise comply with the procedural requirements for filing pleadings in this proceeding, the Office of General Counsel, acting pursuant to delegated authority, made the letter a part of the record by placing a copy in the public Docket and afforded the Bureau an opportunity to respond to Ptak's contentions. In comments filed August 28, 1998, the Bureau argued that Ptak's complaints, e.g., that he was denied due process because the hearing venue was not changed from Washington to San Marcos and he was not allowed to replace his attorney, who is deceased, should be rejected because Ptak failed to demonstrate any error in the S.D. or any reason why the cease and desist order should not be issued and the forfeiture not be imposed. In another letter addressed to Chairman Kennard and dated August 28, 1998, Ptak set forth his position on "the relevant issues of jurisdiction and contested points in this matter," and stated that he would address the Bureau's response to his earlier letter "once it is legally served upon me." He further stated that he is "still waiting for legal delivery of the alleged Cease and Desist Order." The Office of General Counsel also placed Ptak's August 28 letter in the record of this proceeding.

5. The Commission's records confirm that Ptak received a copy of the S.D. by certified

[1]The forfeiture amount was determined by using the statutory base amount $10,000 for the violation at issue (construction and/or operation without an instrument of authorization for the service) which becomes $11,000 with the inflation adjustment pursuant to the Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321-358 (1996). The maximum statutory forfeiture is $11,000 for each day of a continuing violation up to a total of $82,500 for each act or failure to act. See 47 U.S.C. § 503(b)(2)(C); 47 C.F.R. §§ 1.80(b)(3), (b)(4), (b)(5).

mail on August 29, 1998. Notwithstanding this personal service, Ptak did not file exceptions to the S.D. in accordance with the provisions of 47 C.F.R. §§ 1.276 and 1.277, which govern appeal and review of initial and summary decisions, and we are in receipt of no further correspondence or pleadings from Ptak relating to this proceeding.

6. Ptak is the owner or renter of a residence located at 505 Patricia Drive, San Marcos, Texas. From March 26, 1997 to the present, Ptak himself, or with the assistance of others, has operated a radio station at this address using the call letters "KIND." The station operates 24 hours a day seven days a week on 105.9 MHz, which is in the FM frequency band (88 MHz to 108 MHz). S.D., ¶ 5.

7. Ptak does not hold an authorization from the Commission to transmit radio signals on 105.9 MHz.[2] On April 9, 1997, Bureau field agents James D. Wells and Loyd P. Perry tracked the KIND emission and determined that the signal strength uniformly exceeded 250 microvolts/meter at 3 meters, which is the limit for unlicensed operation in the FM frequency band set forth in Section 15.239(b) of the Commission's rules, 47 C.F.R. § 15.239(b). Ptak's signal could be heard for approximately 10 miles. Id. at ¶ 6; Motion for Summary Decision, Exhs. 3, 4.

8. The FCC agents orally advised Ptak on April 9, 1997 that his operation of the station was in violation of federal law and ordered him to cease operations. Ptak did not do so. On April 17, 1997, Perry wrote a follow-up letter to Ptak informing him that unlicensed operation is a violation of Section 301 and could subject him to monetary fine and criminal sanctions including imprisonment. The letter also stated in bold face that unauthorized operation "should cease immediately." On March 20, 1998, FCC agents confirmed that Ptak continued to operate the station. I.D., ¶ 6; Motion for Summary Decision, Exh. 1, Attachment A.

9. The ALJ concluded that summary decision was appropriate because there was no genuine issue of material fact to litigate. Specifically, the ALJ noted, Ptak admitted the illegal operation and stated that he intends to continue operating unless ordered to terminate by a judge. The ALJ summarily rejected Ptak's position, stated in a late-filed response to the Bureau's request for admission of facts and genuineness of documents, that Ptak's station serves as an outlet for the expression of views that are protected by the First Amendment. In addition, the ALJ rejected Ptak's defense based on a claim that he sent a letter to the Commission asking for instructions about applying for a license and/or request for waiver, but received no response. The ALJ found that Ptak did not follow set procedures for applying for a waiver and had made clear his intention to continue broadcasting without a license or a waiver. Finally, in the absence of any good faith effort by Ptak to comply with the licensing requirement or demonstrate

[2]The corresponding channel for 105.9 MHz, Channel 290, is allocated to Round Rock, Texas, a community located approximately 45 miles north of San Marcos. I.D., ¶ 6 n. 1.

an inability to pay, the ALJ concluded that the proposed $11,000 forfeiture was warranted.

10. Notwithstanding Ptak's failure to file exceptions to the S.D. in accordance with the procedural requirements set forth in 47 C.F.R. §§ 1.276 and 1.277, the Commission has reviewed the arguments presented by Ptak in his letters dated July 16 and August 28, 1998. We have done so in response to Ptak's expressed intention to appeal an adverse decision by the ALJ and in recognition of Ptak's assertion that he is without legal representation. Our review of the record makes clear that the S.D. is correct in all respects.

11. The Communications Act precludes any person from transmitting radio signals within the United States without a license. 47 U.S.C. § 301. Under the Commission's rules, low power transmissions in the 88 to 108 MHz band are exempt from FCC licensing requirements if the field strength of the emissions does not exceed 250 microvlts/meter at a distance of 3 meters. 47 C.F.R. § 15.239(b). Ptak does not deny that he has been broadcasting on 105.9 MHz since March 1997 without a license in violation of 47 U.S.C. § 301 and is continuing to do so. It is also undisputed that Ptak's operation exceeds the permissible power limits specified in 47 C.F.R. § 15.239(b) for unlicensed facilities. Although Ptak received both oral and written warnings from Commission officials that his operations were illegal, he continued to violate Section 301. In these circumstances, the ALJ properly concluded that a cease and desist order should issue.

12. Insofar as Ptak presses a constitutional argument in defense of his unauthorized operation, the Commission and the courts repeatedly have made clear that there is no First Amendment right to broadcast without a license. See National Broadcasting Co. v. United States, 319 U.S. 190, 227 (1943) ("The right of free speech does not include, however, the right to use the facilities of radio without a license."); United States v. Dunifer, 997 F.Supp. 1235, 1241 (N.D. Cal. 1998), motion to alter or amend judgment denied, November 18, 1998, appeal pending, No. 99-15035 (9th Cir. 1999); Creation of a Low Power Radio Service, FCC 99-6, released February 3, 1999 at n. 16; Stephen Paul Dunifer, 11 FCC Rcd 718, 720-21 (1995), and cases cited therein. This is true for low power operations as well as for other radio stations. Id.; see also Turro v. FCC, 859 F.2d 1498, 1500 n. 2 (D.C. Cir. 1988) (rejecting a First Amendment challenge to denial of request for waiver of rule prohibiting program origination by FM translator station).

13. We also disagree with Ptak's claim that the Commission "lacks jurisdiction" because the radio transmissions at issue are solely within the state of Texas. In this regard, Ptak relies on a Commission form letter, sent in response to an inquiry from an unlicensed broadcaster in another proceeding, that purports to disavow federal jurisdiction over all intrastate radio transmissions. The Commission explained in a subsequent letter to that unauthorized operator, however, that his question was misunderstood and answered inaccurately. The second letter correctly stated that Section 301 explicitly sets forth the Commission's jurisdiction over all radio transmissions, both interstate and intrastate, and we reiterate that view here. See Keith Perry,

FCC 98-327, released December 23, 1998, at n. 1; see also 47 U.S.C. § 152(b). We also concur with the ALJ's findings that Ptak did not file an application with the Commission or formally seek a waiver of the rules to permit his low power operation, and that Ptak continued to operate even without a waiver.[3] Various other contentions by Ptak, relating to matters such as the proper venue for hearing and requests for party status by his station volunteers and listeners, were considered and rejected for reasons adequately stated by the ALJ in the S.D. and his other rulings below.[4] Ptak's remaining arguments, pertaining to the programming of his station and other area stations, the presence or absence of harmful interference, and the purported lack of citizen access to the airwaves, are not material to the issues in this proceeding and the issuance of a cease and desist order.

14. Finally, insofar as Ptak pleads the cause of microbroadcasting generally, we point out that the Commission recently adopted a Notice of Proposed Rule Making to explore the possible authorization of new, low power FM radio stations, including the creation of a 100-watt secondary service. See Creation of a Low Power Radio Service, FCC 99-6, at 1. We did so in recognition of the growth in radio ownership consolidation over the past few years as a result of the liberalization of our local radio ownership rules, and in response to the increasing public demand for additional outlets of public expression which could expand the diversity of voices. Id. at 6, 40. The proposed rules are prospective in nature, however, and are totally separate from the Commission's repeated efforts, as here, to terminate all unlicensed radio operations.

15. ACCORDINGLY, IT IS ORDERED That, pursuant to 47 U.S.C. § 312(b), Joseph Frank Ptak, and all persons in active concert or participation with him, SHALL CEASE AND DESIST from making unauthorized radio transmissions in violation of 47 U.S.C. § 301.

---

[3]Ptak refers to a letter he and others who operate the station sent to the Commission in March 1997, requesting a rule waiver and enclosing a check in the amount of $25 "to cover application and processing fees." By letter dated June 9, 1997, and addressed to J. Patrick Wiseman, whom Ptak designated as his legal representative, the Bureau responded to Ptak's inquiry. The Bureau stated that Ptak's unlicensed broadcast operation was in violation of Section 301, that it is subject to civil sanction or criminal penalty, that it should be discontinued, that his general request for a waiver was insufficient, that Ptak was required to apply for a license together with a fully supported request for waiver of the relevant rules that limit low power radio service, and that the $25 check was being returned. Motion for Summary Decision, Exh. 4, Attachment D. Notwithstanding this detailed advice from the Bureau, Ptak did not file an application or a proper request for waiver, and he has continued to operate his station.

[4]The ALJ properly ruled in the S.D. that the question of hearing venue was moot in view of the summary disposition of the proceeding. He also correctly held that the multiple motions for party status did not satisfy Commission standards for party intervention under 47 C.F.R. § 1.223(b). See Order, FCC 98M-62, released May 22, 1998.

16. IT IS FURTHER ORDERED That, pursuant to 47 U.S.C. §503(b), Joseph Frank Ptak SHALL FORFEIT to the United States the sum of eleven thousand dollars ($11,000) for willful violation of 47 U.S.C. § 301.[5] Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the Federal Communications Commission, within forty (40) days of the release date of this Decision, to Federal Communications Commission, P.O. Box 73482, Chicago, IL. 60673-7482.

17. IT IS FURTHER ORDERED That a copy of this Decision shall be sent to Joseph Frank Ptak by Certified Mail - Return Receipt Requested.

18. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

[5]A claim of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting principles for the most recent three year period. This information must be submitted within thirty (30) days of the release of this Decision to FCC, Compliance and Information Bureau, Compliance Division, 445 12th Street, S.W., Washington, D.C. 20554.

☆U.S. GOVERNMENT PRINTING OFFICE:1999-454-596/00035