

FCC MAIL SECTION

APR 8 9 41 AM '98

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FCC 98-62

DISPATCH

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

In re)	
)	
KEITH PERRY)	CIB Docket No. 98-46
Leander, Texas)	
)	
Order to Show Cause Why a)	
Cease and Desist Order Should Not Be Issued)	

**ORDER TO SHOW CAUSE AND
NOTICE OF OPPORTUNITY FOR HEARING**

Adopted: April 2, 1998

Released: April 6, 1998

By the Commission:

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 C.F.R. §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 2 1/2 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 C.F.R. §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.¹ 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

¹ 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.

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 Fed. Reg. 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.

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 \$11,000² 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

² 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 C.F.R. §§ 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).