



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In Re Applications of:                    ) CIB DOCKET No.: 98-48  
  )  
JERRY SZOKA                                    )  
  )  
THE GRID                                        )  
For Order To Show Cause Why            )  
A Cease and Desist Order                )  
Should Not Be Issued                      )

Room 234, Court Room 1  
Federal Communications  
Commission  
2000 L Street, N.W.  
Washington, D.C. 20554  
Wednesday,  
May 27, 1998

The parties met, pursuant to the notice of the  
Judge, at 9:10 a.m.

BEFORE: HONORABLE JOSEPH CHACKIN  
Administrative Law Judge

APPEARANCES:

On behalf of Name of Individual:

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1 are you aware of the issues in this proceeding?

2 MR. SZOKA: Yes, I am.

3 JUDGE CHACHKIN: All right. The principal issue  
4 is to determine whether you have transmitted radio energy  
5 without appropriate authorization in violation of Section  
6 301 of the Act. Do you have any comments you wish to make  
7 with respect to that issue, sir, at this point?

8 MR. SZOKA: Well, other than, yes, I have been  
9 transmitting on 96.9 FM. And I --

10 JUDGE CHACHKIN: Can you hear?

11 MS. ELLINGTON: I can.

12 JUDGE CHACHKIN: Go ahead, sir.

13 MR. SZOKA: And I have been trying to persuade the  
14 FCC to change their rules. That's why I'm doing it. That's  
15 -- because there's a need for a community service radio such  
16 as my station, and that's why I'm doing it.

17 JUDGE CHACHKIN: Ms. Ellington, do you have any  
18 comments on what he said?

19 MS. ELLINGTON: I --

20 JUDGE CHACHKIN: Well, let's talk about how you  
21 intend to proceed as far as there have been admissions. Did  
22 you receive a set of admissions, did you not, sir?

23 MR. SZOKA: Yeah.

24 JUDGE CHACHKIN: Have you responded to them?

25 MR. SZOKA: Yeah, it was a request for admissions

1 of facts and genuine documents?

2 JUDGE CHACHKIN: Yes.

3 MR. SZOKA: Yeah, I did. I sent that back last  
4 week some time.

5 JUDGE CHACHKIN: Did you receive a copy, Ms.  
6 Ellington?

7 MS. ELLINGTON: We have not received those, Your  
8 Honor.

9 JUDGE CHACHKIN: How did you send it back, sir?

10 MR. SZOKA: I sent it U.S. mail, and I sent it to,  
11 geez, like two or three different departments.

12 JUDGE CHACHKIN: Do you remember who you sent it  
13 to -- who you personally addressed it to?

14 MR. SZOKA: Uh, well, no, I don't. I don't have  
15 that in front of me. I can find that information up for  
16 you, though. I don't have it in front of me. I'm sure I  
17 sent it to Pamela Hairston. I remember that. And I believe  
18 Jacqueline Ellington.

19 JUDGE CHACHKIN: And when did you send this, sir?

20 MR. SZOKA: Oh, this was like last Tuesday  
21 about -- yeah, last Tuesday.

22 JUDGE CHACHKIN: Well, apparently it hasn't been  
23 received yet. But --

24 MR. SZOKA: Well, that's very strange because I  
25 definitely sent it off because it said on there you have ten

1 or 15 days to respond.

2 JUDGE CHACHKIN: I believe it was ten days.

3 MR. SZOKA: Ten days? Well, okay, I sent it  
4 within the ten days. That I do remember. Yeah, it was ten  
5 days. Well, I don't know what to say about it. I did send  
6 it. I can send out another one if you want.

7 JUDGE CHACHKIN: Well, perhaps after the  
8 conference, Ms. Ellington could speak to you and work out --  
9 perhaps you could fax it to them.

10 MR. SZOKA: Sure. Oh, sure, no problem.

11 JUDGE CHACHKIN: If they have a fax address  
12 they -- you can give him.

13 MR. SZOKA: Okay.

14 JUDGE CHACHKIN: Well, Ms. Ellington, the ball is  
15 in your court. You have the burden of proceeding and the  
16 burden of proof. What do you plan on doing, if anything, by  
17 way of discovery, or how do you intend to proceed or what?

18 MS. ELLINGTON: Well, first of all, Your Honor, we  
19 accept the notice of appearance that Mr. Szoka filed on  
20 4/22/98, and we have no objection to that.

21 JUDGE CHACHKIN: Would you please speak up? Mr.  
22 Szoka's having difficulty hearing you.

23 MR. SZOKA: Yeah.

24 MS. ELLINGTON: We intend to proceed via a motion  
25 for summary decision. We would request an additional week

1 to get the motion in which would allow us time to coordinate  
2 with our field agents in Detroit.

3 JUDGE CHACHKIN: Did you hear --

4 MR. SZOKA: Yes, I did. She wants the information  
5 that I had sent which you haven't received yet.

6 JUDGE CHACHKIN: Well, no, no. She's indicated  
7 that it's the intention of the Bureau to proceed with a  
8 motion for summary decision.

9 MR. SZOKA: Oh.

10 JUDGE CHACHKIN: In other words, the motion is  
11 intended in lieu of a hearing. A motion is to seek a ruling  
12 on the merits that there is no need for a hearing, that the  
13 facts are not in dispute.

14 MR. SZOKA: Well, the hearing is supposed to be  
15 June 23rd. That hearing?

16 JUDGE CHACHKIN: Yes.

17 MR. SZOKA: Oh.

18 JUDGE CHACHKIN: Now the Bureau has indicated that  
19 the intent to file a motion for summary decision.

20 MR. SZOKA: Yeah.

21 JUDGE CHACHKIN: Which, if granted --

22 MR. SZOKA: Yeah.

23 JUDGE CHACHKIN: Would eliminate the need for a  
24 hearing.

25 MR. SZOKA: Okay.

1 JUDGE CHACHKIN: Now --

2 MR. SZOKA: What would they be deciding at that  
3 point?

4 JUDGE CHACHKIN: Well, sir, as you indicated, you  
5 know, the only issue in this proceeding is whether or not  
6 you transmitted radio energy without appropriate  
7 authorization.

8 MR. SZOKA: Oh, okay.

9 JUDGE CHACHKIN: In violation of the Act.

10 MR. SZOKA: Yeah, well, that's obvious.

11 JUDGE CHACHKIN: Well, that's the issue in this  
12 case, sir.

13 MR. SZOKA: Oh.

14 JUDGE CHACHKIN: You may have -- I mean, I'm not  
15 going to in any way say anything about your desire to have a  
16 local station.

17 MR. SZOKA: Right.

18 JUDGE CHACHKIN: But the Act does require that if  
19 you want to broadcast, you have to have a license.

20 MR. SZOKA: Right. Well, it's a Catch-22. They  
21 don't issue licenses. That's the problem.

22 JUDGE CHACHKIN: Well, there are certain licenses.  
23 I mean, you have to apply for a license if there's one  
24 available. If there's not, it's unfortunate. The only  
25 other way to acquire a license is by an assignment by

1 someone who has an existing license. But that's the law.

2 MR. SZOKA: Right. I understand that.

3 JUDGE CHACHKIN: Now --

4 MR. SZOKA: And I have chosen to go a different  
5 route because I was getting no where. I did contact the FCC  
6 about a license and all that, and they were like, well, we  
7 don't issue licenses for stations under 100 watts. And,  
8 well, that's why I'm here to try and make every effort to  
9 change the FCC's ways of doing those things.

10 And I'm well aware that there are hundreds, if not  
11 thousands, of other stations like mine trying to do the same  
12 thing. So that's why I'm here.

13 JUDGE CHACHKIN: All right. Now when you say that  
14 you operate under 100 watts? Is that what you're saying?

15 MR. SZOKA: Yeah. Oh, yeah.

16 JUDGE CHACHKIN: As I understand the Bureau's  
17 contention, I realize that there's no need for a license,  
18 sir, under Part 15 if you meet the requirements.

19 MR. SZOKA: Yeah, and that's like -- it's like  
20 very small wattage like I don't even know what it is. It's  
21 like a watt or less than a watt or a couple watts or  
22 something like that which I mean that's only good for a  
23 couple hundred feet or so. It's no good for really  
24 community radio. Community radio should go out, you know, a  
25 mile or two or something like that. A couple -- few watts

1 just doesn't cover that. So there's a gap between what  
2 licenses they do issue and the licenses that we want them to  
3 issue, and then the licenses for the big commercial  
4 stations.

5 JUDGE CHACHKIN: Well, --

6 MR. SZOKA: So between the commercial stations and  
7 the licenses they issue for the very small wattage, there's  
8 a huge gap which can be filled. And I'm hoping to prove  
9 that with my track record of broadcasting for however long  
10 I've been on the air and not interfering and providing a  
11 service to the community. So that's what I'm trying to do.

12 JUDGE CHACHKIN: Ms. Ellington, do you have  
13 anything further to add today?

14 MS. ELLINGTON: Just that our position, Your  
15 Honor, is that Mr. Szoka is broadcasting at a level that  
16 exceeds the 250 micro volts, and anything above and beyond  
17 that, I guess, wouldn't matter as long as he's above that  
18 level.

19 JUDGE CHACHKIN: Mr. Szoka?

20 MR. SZOKA: Yes sir?

21 JUDGE CHACHKIN: Before I end this conference, do  
22 you have anything else to say? I recognize that you believe  
23 you have a right to operate. But the law is against you,  
24 sir.

25 MR. SZOKA: I understand that.

1 JUDGE CHACHKIN: You need a license.

2 MR. SZOKA: I understand.

3 JUDGE CHACHKIN: You don't have a license.

4 MR. SZOKA: No, I do not.

5 JUDGE CHACHKIN: And obviously if you want to  
6 pursue your efforts to be able to operate, as you say, as a  
7 community station that it's not in this forum that you  
8 should pursue your efforts.

9 Presumably, Congress has the authority and there's  
10 rulemaking. But that doesn't give you the right to continue  
11 to operate without a license until such changes are made.

12 MR. SZOKA: Well, I understand what you're saying,  
13 and that's the way it's been for many, many, many years.  
14 And no one's been able to do anything. So sometimes you  
15 just got to kind of rattle the cage and let -- and stir up  
16 the bees, sort to speak, to get them out. And the only way  
17 we've been able to do that is to just get the transmitter  
18 and start broadcasting and prove to the FCC that, hey, wait  
19 a minute, I guess people can transmit at a higher frequency  
20 than we thought, and they can do it without interfering with  
21 airplanes and police communications and all that kind of  
22 stuff.

23 Equipment's come a long ways since, you know, 20, 30  
24 years -- broadcast equipment, and I made very sure to get  
25 very good equipment just like the big stations. And, well,

1 I'm hoping to prove that to the FCC because they wouldn't  
2 listen.

3 So it's like, okay, you want me to make the first step.  
4 That's what it takes. So, okay, I'm making the first step.  
5 So, well, here I am. I'm in front of you guys.

6 JUDGE CHACHKIN: All right, Mr. Szoka. You  
7 understand the Bureau's indicated they're going to file a  
8 motion for summary decision on the one issue that I have  
9 before me.

10 MR. SZOKA: Uh-huh.

11 JUDGE CHACHKIN: Namely, whether you're operating  
12 without authority.

13 MR. SZOKA: Right.

14 JUDGE CHACHKIN: All right. And where you take it  
15 from there is up to you, but that's the only issue before  
16 me.

17 MR. SZOKA: Okay.

18 JUDGE CHACHKIN: And you have a right when the  
19 motion for summary decision is filed, you have a right to  
20 file a response.

21 MR. SZOKA: Okay.

22 JUDGE CHACHKIN: And then I will rule on the  
23 matter. And if I grant the Bureau's motion, there will not  
24 be a hearing. If I deny the Bureau's motion, then there  
25 will still be a hearing.

1 MR. SZOKA: Okay. And --

2 JUDGE CHACHKIN: Go ahead.

3 MR. SZOKA: I'm sorry. The motion in question  
4 here is simply whether I have been broadcasting or not on a  
5 frequency that is unlicensed. Is that the only issue?

6 JUDGE CHACHKIN: No, the issue is whether you've  
7 transmitted radio energy without appropriate authorization.

8 MR. SZOKA: Oh, okay, well, I mean, that's kind of  
9 obvious. Yeah, well, I mean, I have. But there's all kind  
10 of circumstances as to why. So I mean I understand that the  
11 trial is simply now if I've been broadcasting on a frequency  
12 or radio admissions that are unauthorized.

13 JUDGE CHACHKIN: That's correct. That's what's  
14 before me.

15 MR. SZOKA: Oh, well --

16 JUDGE CHACHKIN: And you will have an opportunity  
17 to file a response.

18 MR. SZOKA: Okay.

19 JUDGE CHACHKIN: And then after the response is  
20 filed, I will make my ruling. And as I indicated to you, if  
21 I rule on behalf of the Bureau, namely, that you have been  
22 operating without authority --

23 MR. SZOKA: Right.

24 JUDGE CHACHKIN: That will be the end of the  
25 hearing.

1 MR. SZOKA: Oh, I see.

2 JUDGE CHACHKIN: And then you'll be able to take  
3 your appeal from that to the Commission if you wish.

4 MR. SZOKA: Oh, well, it seems like your job's  
5 pretty easy then. Okay.

6 MS. ELLINGTON: Your Honor?

7 JUDGE CHACHKIN: Yes, Ms. Ellington.

8 MS. ELLINGTON: We would also note that Mr. Szoka  
9 alluded to a request for a change of venue, and that we note  
10 that there is not a properly filed motion for a change of  
11 venue. And in the event that there were, we would oppose  
12 such a motion.

13 JUDGE CHACHKIN: Did you hear that, Mr. Szoka?

14 MR. SZOKA: Yeah, but what was she referring to?

15 JUDGE CHACHKIN: She was referring to your request  
16 that the hearing be held in Cleveland rather than  
17 Washington, D.C.

18 MR. SZOKA: Oh, well, I don't know that there's  
19 going to be a hearing because you're probably going to -- I  
20 already have a guess at what your ruling will be. So what's  
21 the use?

22 JUDGE CHACHKIN: All right. They've indicated in  
23 any event that they would oppose such a request if there was  
24 a hearing. But we'll just have to wait and see with what  
25 happens with the motion for summary decision. Anything

1 else? Go ahead, Mr. Szoka?

2 MR. SZOKA: No, that's alright. I'm just  
3 listening now.

4 JUDGE CHACHKIN: Ms. Ellington, do you have  
5 anything further before we close the session?

6 MS. ELLINGTON: The date of the motion for summary  
7 decision, Your Honor.

8 JUDGE CHACHKIN: Yes. When will you file it by?

9 MS. ELLINGTON: Well, it would be due on June 3rd.

10 JUDGE CHACHKIN: Yes.

11 MS. ELLINGTON: But we request that we have an  
12 additional seven days to file it so that we can coordinate  
13 with the field agency in Detroit.

14 JUDGE CHACHKIN: You want til June 10th?

15 MS. ELLINGTON: Yes.

16 JUDGE CHACHKIN: Do you have any objection, Mr.  
17 Szoka, for the Bureau to file its motion for summary  
18 decision a week later, June 10th?

19 MR. SZOKA: No, that's fine.

20 JUDGE CHACHKIN: All right. No objection. Your  
21 request is granted. Go ahead, Mr. Szoka.

22 MR. SZOKA: I just found my response to the  
23 summary questions.

24 JUDGE CHACHKIN: You mean to the admissions?

25 MR. SZOKA: To the admissions, yeah. And I did

1 send it to the Secretary of the Commission one original and  
2 six copies and to you - to Law Judge Joseph Chachkin. I  
3 guess that's you.

4 JUDGE CHACHKIN: Right. That's correct.

5 MR. SZOKA: Yeah, I sent one to you as well.

6 JUDGE CHACHKIN: Well, we'll try to make an effort  
7 to find it in the Secretary's Office and find out what  
8 happened to it. If not, Ms. Ellington will be in touch with  
9 you and work it out so you can fax a copy to them.

10 MR. SZOKA: Okay. And one last thing. I did  
11 request from the FCC some information like what reading, you  
12 know, there are actual measurements taken and all that kind  
13 of stuff when they were here in Cleveland. How do I get  
14 that? I mean, it's kind of like important to my case, you  
15 know.

16 JUDGE CHACHKIN: Well, Ms. Ellington, do you have  
17 any comments on that?

18 MS. ELLINGTON: Just that, Your Honor, for us to  
19 respond to those questions, we would request that they be  
20 made in a properly filed motion.

21 JUDGE CHACHKIN: Well, as I gather, in your motion  
22 for summary decision, you're going to provide facts  
23 concerning what the basis of it is, the readings that have  
24 been taken by your engineers, is that correct?

25 MS. ELLINGTON: Yes, we are.

1 JUDGE CHACHKIN: So you will get that information  
2 in the motion for summary decision when the motion is filed,  
3 sir.

4 MR. SZOKA: Okay.

5 JUDGE CHACHKIN: Because you'll get there the  
6 facts on which the Bureau is basing their motion, and they  
7 will have to provide you the information as to the readings  
8 which were taken and the basis for the statements that you  
9 were operating with more power than you're entitled to under  
10 Part 15.

11 MR. SZOKA: Okay.

12 JUDGE CHACHKIN: Which you concede, sir.

13 MR. SZOKA: Right. It's kind of obvious. Just  
14 come to Cleveland and tune in.

15 JUDGE CHACHKIN: So what is the purpose of your  
16 wanting --

17 MR. SZOKA: Well, I guess that hasn't come up yet  
18 because I'm certain this is going to go further. I mean,  
19 after you make your decision whether I've been broadcasting  
20 at a higher wattage than I'm supposed to, well, that's  
21 obvious. But once we get past that point, then it's like,  
22 well, now that I am broadcasting and blah, blah, blah,  
23 what's the problem. I mean, am I interfering with somebody,  
24 and, you know, what kind of complaints are people getting,  
25 you know. Then you've got -- you jump into the whole

1 hornet's nest of everything, and that's the information I'm  
2 after.

3 JUDGE CHACHKIN: Well, --

4 MR. SZOKA: Because I do have documentation that I  
5 am not interfering with any major issues.

6 JUDGE CHACHKIN: Well, even assuming for the sake  
7 of argument that you weren't interfering, you're still  
8 operating outside the authority -- without authority, sir.

9 MR. SZOKA: I know. I'm trying to not be outside  
10 the authority. I want them to give me a license. I do  
11 think that this kind of radio needs to be regulated. I have  
12 no problem with that. Give me a license. They won't.  
13 They're like, no, we don't issue licenses for that. Why  
14 not? Well, then we get into all the issues like -- so, it's  
15 kind of a Catch-22 thing. That's the problem. So that's  
16 what I have to deal with in the future, I guess.

17 JUDGE CHACHKIN: All right. Anything further, Ms.  
18 Ellington?

19 MS. ELLINGTON: No, Your Honor.

20 JUDGE CHACHKIN: Do you have anything further, Mr.  
21 Szoka?

22 MR. SZOKA: No, that's it.

23 JUDGE CHACHKIN: All right, Mr. Szoka. Then the  
24 next thing that you will receive is a motion for summary  
25 decision which you can respond to.

1 MR. SZOKA: Okay.

2 JUDGE CHACHKIN: And I will act on.

3 MR. SZOKA: All right.

4 JUDGE CHACHKIN: All right. Thank you very much,

5 Mr. Szoka.

6 MR. SZOKA: Thank you.

7 JUDGE CHACHKIN: The conference is now concluded.

8 (Whereupon, at 9:25 a.m., the hearing in the

9 above-entitled matter was adjourned.)

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**REPORTER'S CERTIFICATE**

FCC DOCKET NO.: 98-48  
CASE TITLE: IN RE: JERRY SZOKA  
HEARING DATE: May 27, 1998  
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 5-27-98 Michael S. Conrad  
Official Reporter  
Heritage Reporting Corporation  
1220 "L" Street, N.W.  
Washington, D.C. 20005

**TRANSCRIBER'S CERTIFICATE**

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: \_\_\_\_\_ Marlaine Williams  
Official Transcriber  
Heritage Reporting Corporation

**PROOFREADER'S CERTIFICATE**

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 6-5-98 Lorenzo Jones  
Official Proofreader  
Heritage Reporting Corporation