

FCC MAIL SECTION

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MAY 27 10 50 AM '98 Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 98M-60

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DISPATCHED BY

In re

KEITH PERRY
Leander, Texas

Order to Show Cause Why a Cease
and Desist Order Should Not Be Issued

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CIB Docket No. 98-46

ORDER

Issued: May 20, 1998

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Released: May 26, 1998

1. By *Order to Show Cause and Notice of Opportunity for Hearing*, FCC 98-62, released April 6, 1998 ("*OSC*"), the Commission designated this case for hearing. Issues were specified to determine whether Keith Perry has transmitted radio energy without appropriate authorization in violation of Section 301 of the Communications Act of 1934, as amended ("*Act*"), and to determine whether Mr. Perry should be ordered to cease and desist from violating Section 301 of the Act.

2. Paragraph 13 of the *OSC*, citing Section 1.91(c) of the Commission's Rules, ordered Mr. Perry to file, within 20 days of the mailing of the *OSC*, "a written appearance stating that he will appear at the hearing and present evidence on the matters specified in [the *OSC*]." According to the Commission's records, the *OSC* was mailed to Mr. Perry on April 8, 1998. Therefore, Mr. Perry's written appearance was due to be filed on or before April 28, 1998. To date, no written appearance has been filed by or on behalf of Mr. Perry.¹ Further, a prehearing conference was held in this proceeding on May 20, 1998, and Mr. Perry failed to appear and participate in the conference.

3. Pursuant to Section 1.92(a)(1) of the Commission's Rules, the failure to file a timely written appearance indicating that the respondent will appear at a hearing and present evidence on the matters specified in the *OSC* "will constitute a waiver of such hearing . . ." Under

¹ Mr. Perry mailed a document entitled "Certified Demand for FCC Jurisdiction," dated April 13, 1998, to the Chief, Compliance and Information Bureau, Federal Communications Commission. Therein, Mr. Perry "demand[ed]" that the Commission inform him of the basis for its jurisdiction and authority over him so that he may "adequately prepare a meaningful and affirmative defense" to the matters raised in the *OSC*.

The Certified Demand for FCC Jurisdiction does not constitute the "written appearance" required by Section 1.91(c) of the Commission's Rules and the *OSC* in this case. First, the document in question was not addressed to the Commission or the Presiding Judge, and was not formally or officially filed. Second, and more significantly, the Certified Demand neither states nor implies that Mr. Perry "will appear at the hearing and present evidence on the matters specified in the [OSC]." On the contrary, the Certified Demand clearly implies that Mr. Perry does not intend to appear at a hearing unless he is first persuaded that the Commission has jurisdiction over him.

Section 1.92(c) of the Rules, whenever a hearing is waived by, among other things, the failure to file a timely written appearance, the Presiding Judge "shall, at the earliest practicable date, issue an order reciting the events or circumstances constituting a waiver of hearing, terminating the hearing proceeding, and certifying the case to the Commission."

4. Based upon the facts recited above, it must be concluded that Mr. Perry has waived a hearing in this proceeding. Consequently, pursuant to Section 1.92(c) of the Rules, the hearing proceeding will be terminated and the case certified to the Commission.

Accordingly, IT IS ORDERED that this hearing proceeding IS TERMINATED and this case IS CERTIFIED to the Commission.

In light of the termination of the hearing proceeding, IT IS FURTHER ORDERED that the following pleadings ARE DISMISSED as moot: (a) Compliance and Information Bureau's Request for Admission of Facts and Genuineness of Documents, dated May 8, 1998, and addressed to Mr. Perry; and (b) Erratum to Compliance and Information Bureau's Request for Admission of Facts and Genuineness of Documents, dated May 12, 1998, and addressed to Mr. Perry.

IT IS FURTHER ORDERED that the Office of Public Affairs, Reference Operations Division of the Commission SHALL SEND a copy of this order by Certified Mail - Return Receipt Requested to:

Keith Perry
607 Osage Drive
Leander, TX 78641

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge