

FCC MAIL SECTION

COMMUNICATIONS SECTION

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

FCC 98M-62

80875

In Matter of

DISPATCHED
MAY 20 10 21 AM '98

CIB DOCKET NO. 98-44

JOSEPH FRANK PTAK

San Marcos, Texas

Order to Show Cause Why a Cease and

Desist Order Should Not Be Issued

ORDER

Issued: May 21, 1998

Released: May 22, 1998

This is an omnibus accounting of the bench rulings that were made in open court at the first Prehearing Conference held on May 19, 1998. 47 C.F.R. §1.298(b) (Presiding Judge may orally rule on interlocutory matters).

Default

The Compliance and Information Bureau ("Bureau") appeared by counsel. There was no appearance in person or by counsel or other representative for the respondent party, Mr. Joseph Frank Ptak ("Ptak"). There was no communication received from Mr. Ptak by Bureau counsel or by the Presiding Judge to explain or account for his non-attendance. Therefore, the respondent Mr. Joseph Frank Ptak was in default of the Conference which had been ordered.

Notice of Appearance

A pleading styled "Appearance Statement, Motion For Inclusion Of Additional Affected Parties And Motion For Change Of Venue" signed by Joseph Frank Ptak and filed with the Commission on May 7 1998, was accepted, without objection, as a Notice of Appearance in substantial accord with the Commission's Rules [47 C.F.R. §1.91(c)]. All other relief requested by the pleading (addition of parties and change of venue) were denied for failure to meet the Commission's pleading standards and for failure to state sufficient grounds for relief.

¹ See Order FCC 98M-46, released April 16, 1998 (appointing undersigned Presiding Judge and setting initial conference and hearing dates).

Miscellaneous Motions

April 24 Motions

On April 24, 1998, Mr. Ptak submitted miscellaneous motions.² There were no certificates of service accompanying the pleadings and there was no timely service effected on the Bureau. Nor are the pleadings signed by the respondent-party. Because of the total failure to comply with Commission Rules regarding filing, service and signature, the following pleadings were dismissed: In the Matter of and Opportunity To Show Cause And Notice Of Opportunity For Hearing: Motion For Discovery³; Motion For Change of Venue⁴; Miscellaneous correspondence.⁵

May 10 Motions

On May 10, 1998, Mr. Ptak submitted additional motions which the Bureau staff filed with the Secretary on May 15, 1988. Three of the motions were dismissed because the issues were beyond the purview of this hearing (constitutionality of the Communications Act; Commission failure to comply with the Administrative procedure Act; Commission failure to comply with the Public Records Act). Cf. Georgia Public Telecommunications Commission, 7 F.C.C. Rcd 2942 at Paras. 2, 10 (Review Bd 1992).

² The motions were not filed with the Commission Secretary as the rules require. As an accommodation to Mr. Ptak, his pleadings were forwarded to the Secretary where they were accepted for filing. See Order FCC 98M-52 released April 29, 1998. That accommodation may not be repeated in the future. Mr. Ptak is again warned that he must comply with the Rules of Practice. See Order FCC 98M-52, supra. See also Order FCC 98M-46, supra.

³ The documents sought by Mr. Ptak's Motion For Discovery are the documents that will be relied on by the Bureau to prove its case. Mr. Ptak is entitled to that evidence in advance of hearing under the Rules. Therefore, the Motion is superfluous and moot.

⁴ Only the Commission can order a case moved out of Washington, D.C. 47 C.F.R. §1.253(c). The Presiding Judge is not authorized to grant the relief requested.

⁵ Supporting documents include: (a) undated letter from Mr. Ptak (unsigned) to the Commission's office in Gettysburg, PA which states: "If you got a real big problem with what we are doing then you better contact our lawyer, Patrick J. Wiseman --- otherwise we are including a check for all your trouble in the amount of twenty five dollars"; letter dated January 10, 1997, from Mr. Ptak (unsigned) to the Commission at Gettysburg, PA, informally asking for a waiver of the licensing requirements; letter dated November 30, 1997, addressed to the Commission in Gettysburg, PA, informally requesting a waiver from licensing and advising the "we do not really appreciate being sent on a wild goose chase"; letter dated January 24, 1998, from Mr. Ptak (unsigned) addressed to the Commission at Gettysburg, PA claiming a right to a waiver from licensing because the broadcasting is limited to Texas; letter dated March 18, 1998, addressed to the Commission Chairman, signed by Mr. Ptak, arguing that there is no licensing required for broadcasting below 100 watts; an unsigned April 7 programming agenda for Station KIND 105.9 San Marcos.

Other motions that were dated May 10, 1998, and that were acted on include the following: Motion To Extend All Filing Dates (dismissed as redundant and superfluous); Motion For Continuance (denied for lack of cause and hearing date remains as set); Motion To Proceed In Forma Pauperis (dismissed for inadequate showing and non-applicability to non-licensee); Motion To Be Informed Of Filing Dates (dismissed as superfluous).

Motions For Party Status

Ten Motions For Party Status were submitted by Mr. Ptak (but not filed) from April 20, 1998 to April 27, 1998. Only two of those motions reached the Presiding Judge straightforward. The ten pleadings failed to meet the basic standard for intervention as a party. There was no showing in the uniform format utilized by the movants that the person seeking to intervene would or could assist in the determination of the issues that were set by the Commission in this case. See 47 C.F.R. §1.223(b). The motions also failed fatally to comply with service Rules.

Therefore, the following Motions For Party Status, which utilized substantially the same uniform format, were dismissed: Graham Sullivan; Christopher Thomas; Doug Morgan; Scott White; Chad Bowen; Steve Benson; April Nault; John David Schmidt; John Backus; and Adam Tracey.

Anticipated Motion For Summary Decision

On May 8, 1998, in accordance with the Commission's Rules, Bureau Counsel served Mr. Ptak with a Request For Admission Of Facts And Genuineness Of Documents. 47 C.F.R. §1.246. Bureau counsel represented at the Conference that upon the passage of the return date for responding to the Request For Admissions, a Motion For Summary Decision would be filed by the Bureau no later than **June 3, 1998**, i.e., twenty days before the date set for the hearing. 47 C.F.R. §1.251(a)(1).

If the Bureau's Motion For Summary Decision is submitted timely and in proper form, the Presiding Judge will cancel the hearing that was set for June 23, 1998, pending a determination of the Motion For Summary Decision.⁶

⁶ **Mr. Ptak and his witnesses are advised not to purchase tickets for transport to Washington, D.C. for a hearing on June 23, 1998.** It is highly likely that any hearing will be advanced to a later date. Also, the need for a hearing will be contingent on the outcome of the motion for summary decision.

Therefore, the Bureau will file its Motion For Summary Decision in accordance with the Commission's Rules of Practice on or before **June 3, 1998**. Mr. Ptak must file and serve any Opposition in accordance with the Commission's Rules of Practice no later than **June 17, 1998**.⁷

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION⁸



Richard L. Sippel
Administrative Law Judge

⁷ Once the Bureau files for summary decision, the hearing date will be cancelled by the Presiding Judge. A hearing may not be necessary if there are sufficient undisputed facts set forth in the Bureau's motion and if no genuine issue is raised by Mr. Ptak's opposition. See 47 C.F.R. §1.251(e) (if all issues on a dispositive issue are summarily resolved no hearing will be held).

⁸ It is important that the status of the procedural and hearing dates be communicated to Mr. Ptak as soon as possible. Therefore, on the date of issuance, a courtesy copy of this Order was sent to Mr. Ptak by first-class mail.