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Before the
Federal Communications Commission
Washington, DC

AUG - 4 1993

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

In Re:

Jerry Szoka,
Cleveland, Ohio

Order to Show Cause Why a Cease
and Desist Order Should Not Issue

To: Joseph Chachkin
Chief Administrative Law Judge

CIB Docket No. 98-48

Motion to Enlarge Issues

The Commission on April 2, 1988 designated for hearing against Jerry Szoka, Grid Radio, Inc., Cleveland, OH, an order to show cause why a cease and desist order should not be issued barring further unlicensed broadcasting, and why (whether or not Szoka is enjoined from further broadcasting) a forfeiture of \$11,000 (pursuant to § 503(b)(2)(C) and § 1.80(b)(3) of the Rules) should not be imposed for an alleged violation of § 301 of the Act. That Order designated two issues for hearing: (1) to determine whether Jerry Szoka has transmitted radio energy without appropriate authorization in violation of section

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301 of the Act; and (2) to determine whether, based on the evidence adduced pursuant to the preceding issue, Jerry Szoka should be ordered to cease and desist from violating section 301 of the Act.

Following a telephonic pre-hearing conference on May 27, 1988, the CIB filed a Motion for Summary Decision on June 10. Szoka obtained the assistance of pro bono counsel on June 18, 1998 and an extension of time to file his opposition to the CIB's Motion for Summary Decision until July 24, 1998, with an additional extension requested to July 28. By this motion, pursuant to 47 C.F.R. §§ 1.205, 1.229(b)(3), 1.229(c) and 1.243(k), Szoka seeks to enlarge the issues for hearing.

Szoka was not able to set forth these issues following the Commission's original order setting this case for hearing or during the pre-hearing telephonic conference because he had not yet obtained the assistance of counsel. Other than a desire for Grid Radio to remain on the air and serve his niche audience, Szoka was not aware of the various options available to him to achieve that goal. Based on his review of the FM license application, the Rules that effectively prohibit the licensing of new microbroadcast stations, and the experience of other microbroadcast stations who have sought and not obtained waivers, Szoka did not believe he had options within the existing structure of

the Rules. *See Szoka 7/27/98 Decl.* at ¶¶ 20, 22, 26, 28. He was awaiting the outcome of the Commission's present inquiry into the need for and method of implementing a new microbroadcast service, RM Dockets 9208 and 9242, and the outcome of a Commission injunction action against a nationally known microbroadcaster, Free Radio Berkeley, 997 F. Supp. 1385, 1389 (N.D. Cal., June 16, 1998) (microbroadcaster lacked standing to raise First Amendment challenge to licensing ban for the first time as a defense to an enforcement action in district court).

Adding the following issues will not cause any prejudice to the CIB. Grid Radio has been broadcasting since September, 1995. There has been no allegation that Grid Radio is causing any harmful interference. Nor has there been any claim that an application has been filed and designated for hearing that might conflict with his use of the frequency 96.9 MHz.

The issues proposed to be added are as follows:

3. To determine whether this enforcement and forfeiture proceeding should be stayed pending (a) the outcome of the current rulemaking on a new microbroadcasting service and (b) decision on a license application (with appropriate waivers) to be filed by Szoka in the near future.
4. To determine whether the Commission's licensing scheme violates Szoka's

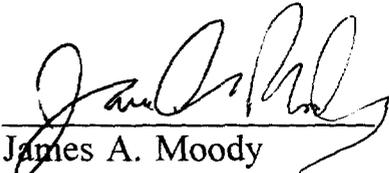
First Amendment rights.

5. To determine whether the Commission's ban on new low-power licenses is conflict with its affirmative duties under the Communications Act, specifically 47 U.S.C. §§ 151, 157(a), 303(g), 303(y), 307(b), and 326.
6. To determine whether Grid Radio is causing harmful interference to existing licensees and/or services.
7. To determine whether Grid Radio is operating in the public interest by providing programming, including both information and entertainment, not otherwise available in the market, and by focusing on and serving a distinct audience not adequately served by existing licensees.
8. To determine whether the proposed \$11,000 forfeiture violates the prohibition in the Eighth Amendment against excessive fines.
9. To determine whether the proposed \$11,000 forfeiture is so punitive that it cannot be imposed without affording Szoka Constitutional safeguards.
10. To determine whether the imposition of the proposed \$11,000 forfeiture violates the Small Business Regulatory Enforcement Fairness Act (SBREFA), P.L. 104-121, § 223(a), which requires the Commission to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.

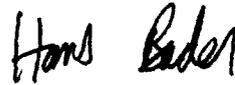
11. To determine the appropriate amount of forfeiture, if any, under 47 C.F.R. § 180(b)(4) and the Commission's Guidelines.

A resolution of these issues is essential to determine whether Szoka should be enjoined from further unlicensed broadcasting and/or whether any forfeiture should be imposed.

Respectfully submitted,



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July 31, 1998

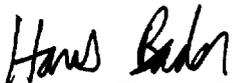
CERTIFICATE OF SERVICE

I, Hans Bader, hereby certify that copies of the foregoing MOTION TO ENLARGE ISSUES were served via hand-delivery on this 4th day of August 1998, to the following:

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