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

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In the Matter of	)	EB DOCKET NO. 01-61
	)	
LESLIE D. BREWER	)	
	)	
Licensee of Amateur Radio Station and General Class Operator License KC4HAZ	)	
	)	
Licensee of Station KAE1170 in the General Mobile Radio Service	)	

ORDER TO SHOW CAUSE, NOTICE OF ORDER OF SUSPENSION, NOTICE OF OPPORTUNITY FOR HEARING, AND NOTICE OF APPARENT LIABILITY FOR A FORFEITURE

Adopted: February 22, 2001 **Released: March 5, 2001**

By the Commission:

I. INTRODUCTION

1. In this Order, we suspend the above-captioned Amateur radio operator license held by Leslie D. Brewer and commence a hearing proceeding before an FCC Administrative Law Judge to determine, ultimately, whether Mr. Brewer's captioned station licenses should be revoked. As discussed below, the record before us indicates that Mr. Brewer has apparently willfully and repeatedly engaged in unlawful Commission-related activities, including the operation of unlicensed (i.e., "pirate") FM radio broadcast facilities in the Tampa, Florida, area. Mr. Brewer's apparent continuing course of misconduct raises questions as to whether Mr. Brewer possesses the requisite character qualifications to be and remain a Commission licensee.

II. BACKGROUND

2. Mr. Brewer is the licensee of Amateur radio station and General class operator license KC4HAZ. He also is the licensee of Station KAE1170 in the General Mobile Radio Service ("GMRS"). Mr. Brewer owns an electronics shop in Tampa, Florida, d/b/a L.D. Brewer 2-Way Radio. L.D. Brewer 2-Way Radio sells and assembles radio equipment.

3. On January 10, 1996, the Commission's Tampa field office received an anonymous inquiry about a pirate FM station broadcasting on 102.1 MHz in the Tampa area. In response, Commission personnel monitored the station the next day and traced the unlicensed transmissions to Mr. Brewer's residence at 6122 Liberty Avenue, Tampa, Florida. The following day, Commission personnel inspected the facilities with Mr. Brewer's permission and warned

him that it is a violation of Section 301 of the Communications Act of 1934, as amended,[1] to transmit on the FM band absent a license with other than certain low power devices.[2] In a letter directed to Mr. Brewer on January 17, 1996, the Commission staff repeated its warning about unlicensed operations. On January 19, 1996, Mr. Brewer responded in writing. Mr. Brewer stated that "[a]ny further operation of [the] station will be within the guidelines for low-power operation, set out in part 15."[3]

4. Thereafter, on February 16, 1996, Commission personnel conducted a follow-up investigation of Mr. Brewer's transmissions. The monitoring revealed that Mr. Brewer was again operating his unlicensed FM station. As a result, on April 3, 1996, the Commission staff issued a Notice of Apparent Liability to Mr. Brewer in the amount of $1,000 for broadcasting without a license, in apparent willful violation of Section 301 of the Act. In response, Mr. Brewer challenged, among other things, the accuracy of field strength measurements taken of his transmissions and the competency of the Commission engineers who had conducted the measurements. On June 19, 1996, the Commission staff released a Forfeiture Order. The Forfeiture Order rejected Mr. Brewer's claims, concluded that Mr. Brewer had engaged in the unauthorized operation of an FM broadcast station in violation of Section 301 of the Act, and directed Mr. Brewer to forfeit the sum of $1,000. The Commission subsequently denied Mr. Brewer's application for review of the Forfeiture Order.[4]

5. Further monitoring revealed that Mr. Brewer continued his pirate operations throughout 1996 and into 1997. During this period, the Commission received written complaints of interference from Paxson Tampa License Limited Partnership ("Paxson"), licensee of Station WHPT(FM), 102.5 MHz, Sarasota, Florida. On June 19, 1997, the Chief, Audio Services Division, Mass Media Bureau, issued a letter denying a May 10, 1996, request by Mr. Brewer for Special Temporary Authority to operate an FM broadcast station on 102.1 MHz in the Tampa area, and returning as unacceptable a November 8, 1996, application by Mr. Brewer for a construction permit for a new Class A noncommercial educational broadcast station on 102.1 MHz in the Tampa area.[5] Notwithstanding these actions, Mr. Brewer continued to operate his FM station without authority. As a consequence, on November 19, 1997, Commission personnel,

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[1] 47 U.S.C. § 301. Section 301 of the Act provides in pertinent part that no person shall operate any apparatus for the transmission of communications by radio from one place in any state to another place in the same state without a license from this Commission.

[2] The only pertinent exception to the blanket prohibition on unlicensed operation is found in Section 15.239(b) of the Commission's rules, 47 C.F.R. §15.239(b). This rule section permits unlicensed emissions between 88 MHz and 108 MHz, *provided* the field strength of such emissions does not exceed 250 microvolts/meter at 3 meters. At all relevant times, Mr. Brewer's FM emissions have exceeded these parameters.

[3] Letter, dated January 19, 1996, from L. D. Brewer to Gerardo Daubar, Federal Communications Commission, Tampa, Florida.

[4] See *Leslie D. Brewer*, 12 FCC Rcd 13,490 (1997).

[5] The June 19, 1997, letter denied the STA request because it failed to satisfy the requirements of Section 15.7(a) of the Commission's rules, 47 C.F.R. § 15.7(a), pursuant to which the STA request was filed. The June 19, 1997, letter returned Mr. Brewer's application as unacceptable for tender, pursuant to Section 73.203(a) of the Commission's rules, 47 C.F.R. § 73.203(a), because it proposed operation of a new FM facility on a channel and in a location not included in FM Table of Allotments. An application for review of the June 19, 1997, actions is pending.

with the assistance of Deputies from the U.S. Marshals Service, served and executed an *in rem* seizure warrant upon Mr. Brewer and confiscated his FM transmission equipment.[6]

6. For two years following the *in rem* seizure of his FM transmitting equipment, Mr. Brewer apparently refrained from engaging in further pirate operations. During this time, on September 14, 1998, Mr. Brewer filed an application for an experimental FM station with the Commission's Office of Engineering and Technology.[7] The staff dismissed the application on September 25, 1998, and returned it to Mr. Brewer because it had been filed on an incorrect form.

7. On November 8, 1999, Mr. Brewer again requested Special Temporary Authority to operate an FM broadcast station on 102.1 MHz in the Tampa area, either as part of the "regular broadcast service" or as an "experimental broadcast service." While this request was pending,[8] and on the second anniversary of the *in rem* seizure (November 19, 1999), Mr. Brewer resumed his pirate broadcasts on 102.1 MHz in apparent willful and repeated violation of Section 301 of the Act.

8. Based on monitoring conducted on November 19 and 23, 1999, Commission personnel confirmed that the source of unlicensed transmissions on 102.1 MHz was a warehouse located in a commercial shopping mall at the Shady Oaks Plaza, 14920 N. Florida Avenue, Tampa, Florida. A tenant list provided by the Ross Realty Group, owners of Shady Oaks Plaza, indicated that the warehouse was leased to an individual by the name of Karen Walsh. Ross Realty Group provided copies of cancelled checks showing that Mr. Brewer had paid for the warehouse space from which the unlicensed broadcasts were emanating.

9. Subsequently, on December 2, 1999, Commission personnel again monitored the unlicensed transmissions from the same warehouse. On that same date, Commission personnel confirmed that Mr. Brewer was employing an unlicensed studio-to-transmitter link ("STL") on 950.0925 MHz to send audio programming and/or control signals from his residence at 6122 Liberty Avenue, Tampa, Florida, to the warehouse, in apparent violation of Section 301 of the Act. Further monitoring by Commission personnel on December 3, 10, and 15, 1999, and March 11, 2000, confirmed continuing operation of both the unlicensed FM station on 102.1 MHz from the Shady Oaks Plaza warehouse and the unlicensed STL on 950.0925 MHz from Mr. Brewer's Liberty Avenue residence.

10. In addition to operating pirate FM and STL facilities, Mr. Brewer also has engaged in marketing unauthorized FM broadcast transmitting equipment, in apparent willful violation of Sections 2.803(a)(1) and 15.201(b) of the Commission's rules, 47 C.F.R. §§ 2.803(a)(1) and 15.201(b).[9] Thus, in early 1997, it came to the Commission's attention that Mr. Brewer, through his business, L.D. Brewer 2-Way Radio, was marketing unauthorized radio frequency devices. As a result, on July 18, 1997, the Commission staff directed a warning letter to Mr. Brewer to refrain from such activities. Mr. Brewer responded on July 21, 1997, denying he was engaged in any unlawful actions.

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[6] The U.S. District Court for the Middle District of Florida, Tampa Division, on February 22, 2000, upheld the validity of the *in rem* seizure.

[7] File No. 6271-EX-PL-1998.

[8] The Commission staff ultimately denied the STA request on June 30, 2000, on multiple grounds.

[9] These rule sections collectively prohibit the marketing and/or sale of unauthorized transmission equipment.

11. Thereafter, on August 6, 1998, an agent from the Commission's Tampa field office, posing as a member of the general public, sent an e-mail to L.D. Brewer 2-Way Radio requesting information about purchasing a 20-watt transmitter that would operate in the FM band. Mr. Brewer responded via e-mail with a price and instructions for purchasing such equipment. On August 25, 1998, the Tampa field office submitted a money order in the amount of $560.00 for the equipment to L.D. Brewer 2-Way Radio. Subsequently, on September 28, 1998, the Tampa field office received a fully assembled 20-watt FM broadcast transmitter from L.D. Brewer 2-Way Radio. There was no indication that the transmitter was authorized by the Commission, and no FCC identifier number was affixed to the equipment. On August 5, 1999, the Commission staff issued a Notice of Apparent Liability against Mr. Brewer in the amount of $10,000 for selling an unauthorized radio frequency device, in apparent violation of Sections 2.803(a)(1) and 15.201(b) of the Commission's rules. The Chief, Enforcement Bureau, subsequently rejected the arguments in Mr. Brewer's written response and issued a Forfeiture Order in the same amount.[10]

III. DISCUSSION

12. The Commission's Character Policy Statement[11] provides that violations of the Communications Act or the Commission's rules are matters which are predictive of licensee behavior and directly relevant to the Commission's regulatory activities. The Character Policy Statement is applicable to Amateur and other wireless radio licensees.[12]

13. Section 301 of the Act provides in pertinent part that no person shall operate any apparatus for the transmission of communications by radio from one place in any state to another place in the same state without a license from this Commission.[13] The requirement for a license in order to broadcast has been upheld by the United States Supreme Court as a proper exercise of the constitutional power of Congress.[14]

14. Since 1996, Mr. Brewer has been warned to refrain from operating unlicensed FM broadcast facilities; he has been the subject of a Forfeiture Order in the amount of $1,000 for operating an unlicensed FM broadcast facility, in willful and repeated violation of Section 301 of the

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[10] On February 22, 2001, the Deputy Clerk for the United States District Court, Middle District of Florida, Tampa Division, entered a default against Mr. Brewer in connection with a consolidated action brought by the Department of Justice on behalf of the FCC to collect the $10,000 forfeiture and the earlier $1,000 forfeiture (see para. 4, above) issued against Mr. Brewer. See, *United States v. Leslie D. Brewer*, Entry of Default, Case No. 8:01-cv-59-T-27MAP, February 22, 2001.

[11] *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986), on reconsideration, 1 FCC Rcd 421 (1986), appeal dismissed *sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987). See *also Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990), on reconsideration, 6 FCC Rcd 3448 (1991), modified, 7 FCC Rcd 6564 (1992).

[12] See, e.g., *Herbert L. Schoenbohm*, 13 FCC Rcd 15,026 (1998).

[13] As noted above at n. 2, Section 15.239(b) of the Commission's rules permits unlicensed transmissions in the FM broadcast band, provided the transmissions are below certain specified field strength levels. The record before us indicates that Mr. Brewer's transmissions on the FM band have, at all relevant times, exceeded these levels and, thus, required a license.

[14] *United States v. Dunifer*, 997 F. Supp. 1235, 1241 (N.D. Cal. 1998), citing *National Broadcasting Co. v. United States*, 319 U.S. 190, 227 (1943).

Act; he was the subject of an *in rem* seizure of equipment used in operating an unlicensed FM broadcast station; and he was the subject of another Forfeiture Order in the amount of $10,000 for marketing unauthorized FM broadcast transmitting equipment, in willful violation of Sections 2.803(a)(1) and 15.201(b) of the Commission's rules. Notwithstanding these warnings and sanctions, the evidence before us indicates that Mr. Brewer continues to engage in the operation of unlicensed broadcast and STL facilities, in flagrant and intentional disregard of Section 301 of the Act.

15. We find that Mr. Brewer's continuing course of conduct raises questions as to whether he possesses the requisite character qualifications to remain a Commission licensee. Mr. Brewer's history of FCC-related transgressions and apparent contempt for the Commission's regulatory authority are patently inconsistent with his responsibilities as a licensee and belie any suggestion that he can be relied upon to comply with the Commission's rules and policies in the future. Consequently, pursuant to Section 1.85 of the Commission's rules, 47 C.F.R. § 1.85, we hereby give notice of the suspension of Mr. Brewer's Amateur radio operator license for the remainder of its term and, pursuant to Section 312 of the Act, 47 U.S.C. § 312, commence a hearing proceeding to determine whether Mr. Brewer's captioned Amateur radio station license and GMRS license should be revoked.

IV. ORDERING CLAUSES

16. ACCORDINGLY, IT IS ORDERED, pursuant to Section 303(m)(1)(A) of the Act, 47 U.S.C. § 303(m)(1)(A), and Section 1.85 of the Commission's rules, 47 C.F.R. § 1.85, that notice is hereby given of the suspension of the above-captioned Amateur radio operator license held by Leslie D. Brewer for the duration of its term. The suspension of the captioned Amateur radio operator license shall take effect 15 calendar days after receipt by Leslie D. Brewer of this Order, unless, within such time, Leslie D. Brewer requests in writing a hearing on the matter of the suspension of his captioned Amateur radio operator license, in which instance, the suspension of his Amateur radio operator license shall be held in abeyance pending conclusion of the hearing.

17. IT IS FURTHER ORDERED, pursuant to Sections 312(a)(2), 312(a)(4), and 312(c) of the Act, 47 U.S.C. §§ 312(a)(2), 312(a)(4), and 312(c), that the above-captioned Amateur radio station and GMRS licenses held by Leslie D. Brewer ARE DESIGNATED FOR HEARING in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine whether Leslie D. Brewer willfully and/or repeatedly violated Section 301 of the Communications Act of 1934, as amended, by operating unlicensed broadcast facilities in 1996, 1997, 1999 and/or 2000, and, if so, the effect thereof on his basic qualifications to be and remain a Commission licensee.

(b) To determine whether Leslie D. Brewer willfully and/or repeatedly violated Section 301 of the Communications Act of 1934, as amended, by operating an unlicensed Studio-to-Transmitter Link in 1999 and/or 2000, and, if so, the effect thereof on his basic qualifications to be and remain a Commission licensee.

(c) To determine whether Leslie D. Brewer willfully and/or repeatedly violated Sections 2.803(a)(1) and/or 15.201(b) of the Commission's rules by marketing and/or selling an unauthorized radio frequency

device or devices, and, if so, the effect thereof on his basic qualifications to be and remain a Commission licensee.

(d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Leslie D. Brewer is qualified to be and remain a Commission licensee.

(e) To determine whether the captioned Amateur radio station license and/or General Mobile Radio Service license held by Leslie D. Brewer should be revoked.

18. IT IS FURTHER ORDERED, pursuant to Section 303(m)(1)(A) of the Act, 47 U.S.C. § 303(m)(1)(A), and Section 1.85 of the Commission's rules, 47 C.F.R. § 1.85, that if Leslie D. Brewer, within 15 calendar days of receipt of this Order, requests in writing a hearing on the matter of the suspension of his captioned Amateur radio operator license, such hearing shall be held in a consolidated proceeding with his above-captioned station license on issues (a) through (d), above, and on the following issue:

(f) To determine whether the captioned Amateur radio operator license held by Leslie D. Brewer should be suspended for the remainder of its term.

19. IT IS FURTHER ORDERED, pursuant to Section 503(b)(3)(A) of the Act, 47 U.S.C. § 503(b)(3)(A), that, notwithstanding the resolution of the foregoing issues, the Presiding Administrative Law Judge shall determine whether an Order of Forfeiture should be issued against Leslie D. Brewer for having willfully and/or repeatedly violated Section 301 of the Act on March 11, 2000, in an amount not to exceed $11,000.

20. IT IS FURTHER ORDERED, pursuant to Section 503(b)(3)(A) of the Act, 47 U.S.C. § 503(b)(3)(A), that, in connection with the potential forfeiture liability noted above, this document constitutes notice.

21. IT IS FURTHER ORDERED, pursuant to Section 1.91(c) of the Commission's rules, 47 C.F.R. § 1.91(c), that, to avail himself of the opportunity to be heard and to present evidence at the hearing in this proceeding on the matter of his captioned Amateur radio station and GMRS licenses, Leslie D. Brewer, in person or by his attorney, shall file, within 15 calendar days after receipt of this Order, a written notice of appearance stating that he will appear at the hearing and present evidence on issues specified in ¶ 17, above. If Leslie D. Brewer fails to file a timely written notice of appearance, his right to a hearing on the matter of his captioned Amateur radio station and GMRS licenses shall be deemed to be waived, and the proceeding thereafter shall be conducted in accordance with Section 1.92 of the Commission's rules, 47 C.F.R. § 1.92.

22. IT IS FURTHER ORDERED, that Leslie D. Brewer may file his written request for a hearing on the matter of his captioned Amateur radio operator license in a consolidated filing with his written notice of appearance on the matter of his captioned Amateur radio station and GMRS licenses.

23. IT IS FURTHER ORDERED, pursuant to Section 312(d) of the Communications Act of 1934, as amended, 47 U.S.C. §312(d), and Section 1.91(d) of the Commission's Rules, 47 C.F.R. § 1.91(d), that the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Enforcement Bureau as to all of the issues specified above.

24. IT IS FURTHER ORDERED that the Commission's Reference Information Center shall send a copy of this Order, via Certified Mail - Return Receipt Requested, to Leslie D. Brewer, 6122 Liberty Avenue, Tampa, Florida 33617.

25. IT IS FURTHER ORDERED that the Secretary of the Commission shall cause to have this Order or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary