

FEDERAL COMMUNICATIONS COMMISSION

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

In the Matter of)	
)	File No. EB-99-HU-039
Robert L. Meyers)	
)	NAL Acct. No X3254-001
Licensee of Amateur Radio Station N5WLY)	
Houston, Texas)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Robert L. Meyers hereby enter into this Consent Decree for the purpose of terminating a forfeiture proceeding arising from an investigation related to Meyers' operation of an Amateur Radio station.

BACKGROUND

2. Prompted by complaints of interference by an unknown radio operator, the Commission's Houston Field Office monitored and identified radio transmissions on February 24, 1999, emanating from a vehicle registered to Meyers. The transmissions were on the input frequency of an Amateur Radio repeater system operated by the Memorial Emergency Repeater Association ("MERA") on 145.470/144.870 MHz in the Houston area. On June 1, 1999, agents from the Houston office conducted an inspection of the vehicle registered to Meyers and from which they had monitored the interfering radio transmissions on February 24. The agents found a whip antenna similar to the type used for transmissions in the 144 MHz frequency range on the floor of the vehicle's rear cargo area. The antenna was not connected to radio equipment and the agents found no other radio equipment in the vehicle at the time.

3. In June 1999, the Houston Field Office issued a Notice of Violation for willful and malicious interference to radio communications in violation of Section 333 of the Communications Act of 1934, as amended ("Act"), for violation of Section 97.101(d) of the Commission's rules ("Rules") and for transmitting unidentified Amateur radio communications in violation of Section 97.119 of the Rules. Meyers responded and denied the violations.

4. On January 13, 2000, the Commission's Houston Field Office issued Meyers a Notice of Apparent Liability for Forfeiture ("NAL") finding Meyers apparently liable for a forfeiture in the amount of \$8,000¹. The NAL stated that Meyers had operated his Amateur Radio station so as to willfully and maliciously cause interference to radio communications in apparent

¹ *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. X3254-001 (Enforcement Bureau, Houston Office, released January 13, 2000).

FEDERAL COMMUNICATIONS COMMISSION

willful violation of Section 333 of the Communications Act, 47 U. S. C. Section 333, and Section 97.101(d) of the Commission's Rules, 47 C.F.R. Section 97.101(d), and transmitted unidentified communications in apparent willful violation of Section 97.119 (a) of the Commission's Rules, 47 C.F.R. Section 97.119(a).

5. On February 4, 2000, Meyers submitted a response to the NAL and requested cancellation. Meyers denied the violations and claimed that during 1999 he did not have radio transmitting equipment in the vehicle to which the Field Agent stated he had located the transmissions. Meyers stated that he never willfully or maliciously interfered with any Amateur communications or transmitted unidentified radio communications.

6. On May 3, 2000, the Enforcement Bureau issued a *Forfeiture Order* affirming the \$8,000 forfeiture amount.² The *Forfeiture Order* noted that Meyers' assertions that he never had a radio transmitter in his vehicle during 1999 were contradicted by the observations of the FCC agent. On February 24, 1999, the FCC agent followed Mr. Meyers' vehicle from a location near Meyers' residence to his place of business at 8825 Salon Road. Immediately after Meyers' vehicle came to a stop and parked in front of 8825 Salon Road, the agent observed radio transmissions consisting of derogatory remarks being transmitted on the input frequency of the MERA repeater, resulting in interference to communications already in progress on the repeater. While monitoring these frequencies, the agent observed that no FCC identification was transmitted. The agent completely circled Meyers' vehicle and positively determined that the transmissions were coming from the vehicle. Furthermore, the agent observed Meyers lowering his head at the start of each of the transmissions and observed him leaving the vehicle. No other persons or vehicles were present. The agent observed a whip antenna of the type used in the 144 MHz frequency range located in the cargo area of Meyers' vehicle.

7. On June 2, 2000, Meyers, through his attorney, submitted a Petition for Reconsideration and asked that the *Forfeiture Order* be reversed. Meyers again denied the violations and argued that the three month delay between the time the agent identified the radio transmissions and the time that Meyers' vehicle was inspected unfairly prejudiced him because if an immediate inspection had taken place, it would have shown that he had no radio equipment in his vehicle.

DEFINITIONS

8. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) The "Commission" means the Federal Communications Commission.
 - (b) The "Bureau" means the Enforcement Bureau of the Commission.
 - (c) The "Order" means the Bureau's order adopting this Consent Decree.
 - (d) "Enforcement Proceeding" means the investigation of and the series of Commission orders concerning the alleged radio operation of Meyers culminating in the *Forfeiture Order*.

² *Robert L. Meyers*, 15 FCC Rcd 8045 (Enf. Bur. 2000)

FEDERAL COMMUNICATIONS COMMISSION

- (e) The “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*
- (f) “Meyers” means Robert L. Meyers, licensee of Amateur Radio station N5WLY, Houston, Texas.
- (g) “*Forfeiture Order*” means *Robert L. Meyers*, 15 FCC Rcd 8045 (Enf. Bur. 2000)

AGREEMENT

9. Meyers acknowledges and agrees that the Commission has jurisdiction over the matters referenced in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

10. Meyers agrees not to contest the findings in the *Forfeiture Order* that Meyers violated Section 333 of the Act with respect to the radio transmissions on February 24, 1999 provided that these findings shall not be used by the Bureau against Meyers in any other current or future proceedings before the Bureau, except as set forth in paragraph 16 of this Consent Decree.

11. Meyers and the Bureau agree that this Consent Decree does not constitute an adjudication of the merits, or any finding on the facts or law regarding any violations committed by Meyers arising out of the Enforcement Proceeding, and that it is not to be construed as an admission of the violations by Meyers.

12. Meyers shall make a voluntary contribution to the United States Treasury in the amount of \$1,000 within 30 calendar days after the Order adopting this Consent Decree is no longer subject to reconsideration, appeal or review in accordance with the Act and the Commission’s Rules. Meyers further agrees to submit his license for Amateur Radio station N5WLY for cancellation within the same time period, and not to re-apply for an Amateur license for a period of 5 years after the date of the order adopting this Consent Decree.

13. Meyers and the Bureau acknowledge and agree that this Consent Decree shall constitute a final settlement between them.

14. In express reliance upon the covenants and representations contained herein, the Bureau agrees to terminate the Enforcement Proceeding at such time as the Bureau adopts this Consent Decree.

15. Meyers waives any and all rights he may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without modification.

16. In the event that Meyers is found by the Commission or its delegated authority to have engaged in conduct the same or similar to that described in paragraph 2 of this Consent

FEDERAL COMMUNICATIONS COMMISSION

Decree, Meyers and the Bureau agree that the apparent misconduct described in paragraph 2 may be used by the Bureau only to fashion an appropriate sanction, provided that Meyers shall not be precluded or estopped from litigating *de novo* any and all of the issues arising from the facts and allegations presented in the NAL as necessary to defend, in any forum, his interest from challenge by any person or entity not a party to this Consent Decree.

17. Meyers and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without modification.

18. Meyers and the Bureau agree that, in the event any court of competent jurisdiction renders this Consent Decree invalid, the Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

19. Meyers and the Bureau agree that, if the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither Meyers nor the Commission will contest the validity of the Consent Decree or Order, and Meyers will waive any statutory right to a trial *de novo* with respect to the matter upon which the Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

20. Meyers agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. §§ 1.1501 *et seq.*

21. Meyers agrees that any violation of the Consent Decree or the Order adopting the Consent Decree will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

22. Any provision of this Consent Decree affected by or inconsistent with any subsequent rule or order adopted by the Commission will be superseded by such Commission rule or order.

23. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION ROBERT L. MEYERS
ENFORCEMENT BUREAU

By: _____
David H. Solomon
Chief, Enforcement Bureau
Date:

By: _____
Robert L. Meyers
Date: