

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

In the Matter of) EB DOCKET NO. 01-61
)
LESLIE D. BREWER) Acct. No. 200132080023
)
Licensee of Amateur Radio Station and)
General Class Operator License KC4HAZ)
)
Licensee of Station KAE1170 in the)
General Mobile Radio Service)

ORDER OF REVOCATION AND OF FORFEITURE

Adopted: June 21, 2001

Released: June 26, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this Order, we revoke the above-captioned Amateur Radio and General Mobile Radio Service ("GMRS") station licenses held by Leslie D. Brewer, and impose upon him a forfeiture in the amount of \$11,000 for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended. We conclude, based upon evidence of Mr. Brewer's "pirate radio" and other unlawful activities, that he lacks the basic character qualifications to be and remain a Commission licensee.

II. BACKGROUND

2. By Order to Show Cause, Notice of Order of Suspension, Notice of Opportunity for Hearing, and Notice of Apparent Liability for a Forfeiture, FCC 01-74, released March 5, 2001 ("OSC"), the Commission designated this case for hearing. The OSC, at ¶ 17, specified 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 (i.e., "pirate") 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 whether, in light of the evidence adduced pursuant to the foregoing issues, 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.

3. The OSC, at ¶ 19, also ordered the Presiding Judge, notwithstanding the resolution of the foregoing issues, to determine whether an Order of Forfeiture should be issued against Mr. Brewer for having willfully and/or repeatedly violated Section 301 of the Communications Act of 1934, as amended,¹ on March 11, 2000. The OSC set the maximum forfeiture amount at \$11,000.

4. The OSC, at ¶ 21, ordered Mr. Brewer, pursuant to Section 1.91(c) of the Commission's rules,² to file a written notice of appearance in order to avail himself of the opportunity to be heard. The OSC explained that if Mr. Brewer failed to file a timely written notice of appearance, his right to a hearing on the matter of his captioned station licenses would be deemed waived, and the proceeding thereafter would be conducted in accordance with Section 1.92 of the Commission's rules.

5. By *Memorandum Opinion and Order*, FCC 01M-11, released May 4, 2001, the Presiding Judge determined that Mr. Brewer had received a copy of the OSC, but failed to file a written (or any other) notice of appearance seeking to avail himself of the opportunity to be heard. Accordingly, the Presiding Judge concluded that the hearing was waived. The Presiding Judge terminated the proceeding and certified the case to the Commission for disposition in accordance with Section 1.92(c) of the Commission's rules.³

III. FINDINGS OF FACT

6. The facts contained in the OSC are uncontested. Based on that information and other Commission records, we make the following specific findings.

7. Mr. Brewer is the licensee for 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.

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.91(c).

³ 47 C.F.R. § 1.92(c). Section 1.92(c) provides that when a hearing is deemed waived, the Presiding Administrative Law Judge shall promptly certify the case to the Commission. Section 1.92(d) of the Commission's rules further provides that the Commission will thereafter, on the basis of the information before it, determine whether an order of revocation should issue. Pursuant to Section 0.111(a)(14), the Enforcement Bureau has delegated authority to "issue or draft appropriate orders after a hearing has been terminated by an Administrative Law Judge on the basis of waiver." 47 C.F.R. § 0.111(a)(14). *See also* 47 C.F.R. § 0.311.

8. In response to an anonymous inquiry about a pirate FM station broadcasting on 102.1 MHz in the Tampa area, Commission personnel monitored the station on January 11, 1996, and traced the unlicensed transmissions to Mr. Brewer's residence at 6122 Liberty Avenue, Tampa, Florida. On January 12, 1996, Commission personnel warned Mr. Brewer that, except when operating certain low power devices, it is a violation of Section 301 of the Communications Act⁴ to transmit on the FM band without a license.⁵ In a letter directed to Mr. Brewer on January 17, 1996, Commission staff repeated its warning about unlicensed operations. On January 19, 1996, Mr. Brewer responded in writing and stated that "[a]ny further operation of [the] station will be within the guidelines for low-power operation, set out in part 15."⁶

9. 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, 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.⁷ In response, Mr. Brewer challenged, among other things, the accuracy of field strength measurements taken of his transmissions and the competency of Commission engineers who had conducted the measurements. On June 19, 1996, 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.⁸

10. Further monitoring on October 25, 1996, January 31, 1997, May 15, 1997, and October 14, 1997, 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.⁹

⁴ 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.

⁵ 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.

⁶ Letter, dated January 19, 1996, from L. D. Brewer to Gerardo Daubar, Federal Communications Commission, Tampa, Florida.

⁸ See *Leslie D. Brewer*, 12 FCC Rcd 13,490 (1997).

⁹ 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.

Notwithstanding these actions, Mr. Brewer continued to operate his FM station without authority. As a consequence, on November 19, 1997, Commission personnel, 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.¹⁰

11. 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.¹¹ The staff dismissed the application on September 25, 1998, and returned it to Mr. Brewer because it had been filed on an incorrect form.

12. 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,¹² and on the second anniversary of the *in rem* seizure (November 19, 1999), Mr. Brewer resumed his pirate broadcasts on 102.1 MHz in willful and repeated violation of Section 301 of the Act.

13. 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 Ross Realty Group, the 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 leased by Karen Walsh, and from which the unlicensed broadcasts were emanating.

14. 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, 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.¹³

15. Commission staff continued monitoring transmissions on frequency 102.1 MHz during the early part of the year 2000. On March 11, 2000, Commission staff traced transmissions on frequency 950.095 MHz radiating from Mr. Brewer's residence located at 6122 East Liberty Avenue, Tampa, Florida. Commission staff then monitored transmissions on frequency 102.1 MHz and heard programming identical to the programming being broadcast on frequency 950.095 MHz. Commission staff determined that the transmissions on frequency 102.1 MHz were radiating from a tower located in the Shady Oaks Plaza warehouse on Florida

¹⁰ 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.

¹¹ File No. 6271-EX-PL-1998.

¹² The Commission staff ultimately denied the STA request on June 30, 2000, on multiple grounds.

Avenue in Tampa. Measurements taken at approximately 250 meters from the warehouse tower by Commission staff indicated a field strength of 102,127 microvolts per meter, which exceeded the radiation emission limit prescribed by Section 15.239 of the Commission's rules.¹⁴ Mr. Brewer did not have authority to transmit at that power level or to operate an STL facility.

16. In addition to operating pirate FM and STL facilities, Mr. Brewer also has engaged in marketing unauthorized FM broadcast transmitting equipment, in 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).¹⁵ Specifically, 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, 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.

17. 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, 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.¹⁶

IV. CONCLUSIONS OF LAW

18. 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.¹⁷ The requirement for a license

¹⁴ 47 C.F.R. § 15.239. *See* n. 5.

¹⁵ These rule sections collectively prohibit the marketing and/or sale of unauthorized transmission equipment.

¹⁶ 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. 7, 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.

¹⁷ As noted above at n. 5, 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.

in order to broadcast has been upheld by the United States Supreme Court as a proper exercise of the constitutional power of Congress.¹⁸

19. The Commission's Broadcast Character Policy Statement¹⁹ 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 may be used as guidance for Amateur and other wireless radio licensees.²⁰

20. Based on the evidence before us, the issues specified in the OSC are resolved adversely to Mr. Brewer. As early as January 12, 1996, the Commission advised Mr. Brewer to refrain from operating unlicensed broadcast facilities. Notwithstanding that warning, Mr. Brewer continued to engage in unlawful conduct. The record amply demonstrates that Mr. Brewer willfully and repeatedly violated Section 301 of the Act by operating unlicensed broadcast facilities in 1996, 1997, 1999 and 2000; that Mr. Brewer willfully and repeatedly violated Section 301 of the Act by operating an unlicensed Studio-to-Transmitter Link in 1999 and 2000;²¹ and that Mr. Brewer willfully and repeatedly violated Sections 2.803(a)(1) and 15.201(b) of the Commission's rules by marketing and/or selling an unauthorized radio frequency device or devices.

21. We further find, as a matter of law, that Mr. Brewer is unqualified to be and remain a Commission licensee and that the captioned Amateur Radio and GMRS licenses held by him should be revoked. Mr. Brewer continues to display a cavalier disregard toward his licensee obligations, as prescribed by the Act and the Commission's rules, notwithstanding clear and repeated notice that his behavior was unlawful. Based on Mr. Brewer's flagrant and continuing refusal to comply with the Act and Commission rules, we conclude that Mr. Brewer cannot be relied upon to carry out the responsibilities of a licensee and, hence, does not possess the basic character qualifications to hold a Commission authorization. Consequently, we will revoke Mr. Brewer's Amateur Radio and GMRS station licenses.²²

¹⁸ *National Broadcasting Co. v. United States*, 319 U.S. 190, 227 (1943); see also *United States v. Dunifer*, 997 F. Supp. 1235, 1241 (N.D. Cal. 1998).

¹⁹ *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).

²⁰ See, e.g., *Herbert L. Schoenbohm*, 13 FCC Rcd 15,026 (1998) (denying renewal of amateur license based on felony conviction and lack of candor), *recon. denied* 13 FCC Rcd 23774 (1998), *appeal dismissed*, 204 F.3d 234 (D.C. Cir. 2000), *cert. denied*, 121 S.Ct. 405 (2000).

²¹ The evidence establishes that Mr. Brewer has operated unlicensed broadcast and/or STL facilities on at least the following dates: January 11, 1996; February 16, 1996; October 25, 1996; January 31, 1997; May 15, 1997; October 14, 1997; November 19 and 23, 1997; December 3, 10, and 15, 1997; and March 11, 2000.

²² The OCS, at ¶ 16, ordered the suspension of Mr. Brewer's Amateur Radio operator license for the remainder of its term, effective 15 days after Mr. Brewer's receipt of the OCS, unless, within that time, Mr. Brewer requested in writing a hearing to challenge the suspension. The record reveals that at no time did Mr. Brewer request a hearing on the matter of the suspension of his Amateur Radio operator license. Accordingly, the suspension of his Amateur Radio operator license has already become effective by operation of the OCS and the matter of such suspension need not be considered in the instant Order.

22. As noted above at ¶ 3, the OSC (at ¶ 19) directed that, notwithstanding the resolution of the specified issues, it should be determined whether a forfeiture order should be issued against Mr. Brewer in an amount not to exceed \$11,000 for willfully and/or repeatedly violating Section 301 of the Act on March 11, 2000. We conclude that a forfeiture order should be issued against Mr. Brewer, and that it should be for the maximum amount. The record evidence clearly shows that Mr. Brewer engaged in unlicensed operations of both an FM broadcast facility and an unlicensed STL on March 11, 2000, in willful and repeated violation of Section 301 of the Act.

23. Sections 503(b) of the Act and 1.80 of the Commission's rules state that any person who willfully or repeatedly fails to comply with the Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b), the term "willful" means that the violator knew that he was taking the action in question, irrespective of any intent to violate the Commission's rules.²³ In assessing a forfeiture, we take into account the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.²⁴

24. After considering all the facts and circumstances, including Mr. Brewer's long history of misconduct before this agency, we believe that a forfeiture in the maximum amount of \$11,000 is appropriate. Operating unlicensed radio facilities in deliberate and brazen defiance of our rules cannot and will not be tolerated.

V. ORDERING CLAUSES

25. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 312 of the Communications Act of 1934, as amended,²⁵ and Sections 1.92(d) and 0.111(a)(14) of the Commission's rules,²⁶ that the captioned Amateur Radio and GMRS station licenses held by Leslie D. Brewer ARE REVOKED, effective on the 40th day after release of this Order, unless Mr. Brewer files a petition for reconsideration within 30 days of release of this Order, in which case the effective date will be suspended pending further order of the Commission.

26. IT IS FURTHER ORDERED, pursuant to Section 503(b)(3)(A) of the Communications Act of 1934, as amended, and Section 1.80(f)(4) of the Commission's rules,²⁷ that Leslie D. Brewer SHALL FORFEIT to the United States the sum of eleven thousand dollars (\$11,000) for willfully violating Section 301 of the Communications Act of 1934, as amended.

²³ See *Jerry Szoka*, 14 FCC Rcd 9857, 9865 (1999) *recon. denied*, 14 FCC Rcd 20147 (1999) *petition for review pending sub nom. Grid Radio and Jerry Szoka v. FCC*, No. 99-1463 (D.C. Cir. November 17, 1999); *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

²⁴ 47 U.S.C. § 503(b)(2)(D). See also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100-01 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Guidelines*").

²⁵ 47 U.S.C. § 312.

²⁶ 47 C.F.R. §§ 1.92(d), 0.111(a)(14).

²⁷ 47 U.S.C. § 503(b)(3)(A), 47 C.F.R. § 1.80(f)(4).

27. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 within 30 days of the release of this Forfeiture Order.²⁸ If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to 47 U.S.C. §§ 503(b)(3)(B) and 504(a).

28. IT IS FURTHER ORDERED that a copy of this Order shall be sent, via Certified Mail - Return Receipt Requested, to Leslie D. Brewer, 6122 Liberty Avenue, Tampa, Florida 33617.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²⁸ 47 C.F.R. § 1.80. Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must reference the Acct. No. identified above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street S.W., Washington, D.C. 20554. *See* 47 C.F.R. § 1.1914.