

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

In the Matter of
David S. Larsen, Sr.,
Highland Park, New Jersey
File No. EB-FIELDNER-18-00027017
NAL/Acct No. 201932010001
FRN: 0003423506

ORDER

Adopted: June 18, 2019

Released: June 18, 2019

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether David S. Larsen, Sr. (Mr. Larsen), violated section 301 of the Communications Act of 1934, as amended (Act),1 and sections 90.20, 90.403, 90.405, and 90.425 of the Commission’s rules2 by operating on spectrum that the Commission has licensed to the Borough of Highland Park for public safety communications. These sections of the Act and the Commission’s rules ensure that spectrum remains available for exclusive use by public safety entities by prohibiting unauthorized operations, establishing eligibility requirements to obtain a license for spectrum reserved for public safety uses, delineating the scope of permitted communications, and requiring authorized stations periodically to transmit call signs or similar station identification when using a public safety network. Unauthorized transmissions on public safety radio networks, such as the one operated by the Borough of Highland Park, poses a unique threat to public safety because it can “create[] a scenario in which a dispatcher might not be able to hear and respond to an emergency transmission” from authorized users, thereby endangering the safety of first responders and the public they are called to protect.3

2. To settle this matter, Mr. Larsen (a) admits that he made unauthorized transmissions on spectrum licensed to the Borough of Highland Park; (b) agrees not to engage in unauthorized use of a radio station in the future; (c) surrenders his amateur radio license for cancellation, with an agreement not to apply for a new amateur radio license for three (3) years; (d) surrenders radios in his possession that are capable of transmitting on the spectrum licensed to the Borough of Highland Park; (e) agrees to pay a \$7,500 civil penalty; and (f) agrees to pay an additional \$32,500 civil penalty if in the next ten (10) years the Commission finds that he has made radio transmissions without the requisite authority or otherwise violates the terms of the Consent Decree.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree regarding Mr. Larsen’s

1 47 U.S.C. § 301.

2 47 CFR §§ 90.20, 90.403, 90.405, 90.425.

3 Jay Peralta, Corona, New York, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 3246, 3252, para. 12 (2017); forfeiture ordered, 32 FCC Rcd 7993 (2017); see also Ocean Adrian Hinson, Surry County, North Carolina, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 9977 (2018).

unauthorized operation in violation of section 301 of the Act and in violation of sections 90.20, 90.403, 90.405 and 90.425 of the Commission's rules.⁴

4. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Mr. Larsen's basic qualifications to hold or obtain any Commission license or authorization.⁵

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act⁶ and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,⁷ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

6. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against Mr. Larsen related to the above-captioned investigation that are pending before the Bureau as of the date of this Consent Decree **ARE DISMISSED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to David S. Larsen, Sr. at his place of residence and to Leonard R. Boyer, Esq., Boyer Coffy, LLC, 970 Clifton Avenue, Suite 201, Clifton, New Jersey 07013.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief, Enforcement Bureau

⁴ 47 U.S.C. § 301; 47 CFR §§ 90.20, 90.403, 90.405, 90.425.

⁵ See 47 CFR § 1.93(b).

⁶ 47 U.S.C. § 154(i).

⁷ 47 CFR §§ 0.111, 0.311.

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In the Matter of)
David S. Larsen, Sr.) File No. EB-FIELDNER-18-00027017
Highland Park, New Jersey) NAL/Acct No. 201932010001
) FRN: 0003423506
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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and David S. Larsen, Sr. (Mr. Larsen), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Mr. Larsen violated section 301 of the Communications Act of 1934, as amended, and sections 90.20, 90.403, 90.405, and 90.425 of the Commission’s rules by operating an unauthorized radio on, and causing interference to authorized users of, the Highland Park Radio System. As set forth herein, to resolve this matter Mr. Larsen (a) admits that he made unauthorized transmissions on spectrum licensed to the Borough of Highland Park; (b) agrees not to engage in unauthorized use of a radio station in the future; (c) surrenders his amateur radio license for cancellation, with an agreement not to apply for a new amateur radio license for three (3) years; (d) surrenders radios in his possession that are capable of transmitting on the spectrum licensed to the Borough of Highland Park; (e) agrees to pay a \$7,500 civil penalty; and (f) agrees to pay an additional \$32,500 civil penalty if in the next ten (10) years the Commission finds that he has made radio transmissions without the requisite authority or otherwise violates the terms of this Consent Decree.

I. DEFINITIONS

- 2. For the purposes of this Consent Decree, the following definitions shall apply:
(a) “Act” means the Communications Act of 1934, as amended.8
(b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
(d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
(e) “Compliance Commitment” means the compliance obligations described in this Consent Decree at paragraph 12.
(f) “Effective Date” means the date by which both the Bureau and Mr. Larsen have signed the Consent Decree.
(g) “Highland Park Radio System” means the public safety radio system operated by the Borough of Highland Park, New Jersey, pursuant to a license issued by the Commission and using call sign KBI965.
(h) “Investigation” means the investigation commenced by the Bureau in File No. EB-FIELDNER-18-00027017 regarding whether Mr. Larsen violated section 301 of the

8 47 U.S.C. § 151 et seq.

Act and the Part 90 Public Safety Rules by operating an unauthorized radio on, and causing interference to authorized users of, the Highland Park Radio System.

- (i) “Part 90 Public Safety Rules” means 47 CFR §§ 90.20, 90.403, 90.405 & 90.425 and other provisions of the Act, the Rules, and Commission orders related to the operation of land mobile radios on spectrum designated for public safety uses.
- (j) “Parties” means Mr. Larsen and the Bureau, each of which is a “Party.”
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (l) “Sad Trombone Sound” means a series of chromatic, descending “waahs” played on a trombone and commonly used to denote failure.

II. BACKGROUND

3. Unlicensed radio stations undermine the Commission’s efforts to manage radio spectrum and can interfere with licensed communications, including communications over spectrum licensed for use by first responders and other public safety entities. Section 301 of the Act states that “No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio [within the United States] ... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”⁹ Unlicensed radio stations operate illegally, in violation of section 301. Section 90.20 of the Rules establishes, among other things, eligibility requirements to obtain an authorization from the Commission to operate on specific frequencies that the Commission has reserved for public safety uses.¹⁰ Section 90.403 of the Rules establishes general operating requirements, including a requirement to avoid causing interference to other licensees.¹¹ Section 90.405 of the Rules sets the scope of permissible communications using spectrum licensed by the Commission.¹² Section 90.425 establishes a requirement that stations licensed under the Part 90 Public Safety Rules periodically transmit certain identifying information.¹³ In particular, these sections of the Act and the Part 90 Public Safety Rules (a) require an entity to obtain a license from the FCC to operate on a public safety network; (b) prohibit non-governmental or other public safety organizations from obtaining public safety spectrum licenses from the FCC; (c) restrict transmissions on public safety networks, including the Highland Park Radio System, to public safety communications; and (d) require any transmissions on such networks to include the call sign or similar station or system identification.

4. Mr. Larsen is an amateur radio licensee who operates under the call sign WS2L. On May 31, 2018, the Bureau received a complaint of unauthorized transmissions on the Highland Park Radio System. Bureau agents traveled to Highland Park on numerous occasions to interview witnesses and to observe the complained-of transmissions. Based on information provided by the complainant and direct observations by the Bureau’s agents, the unauthorized transmissions on the Highland Park Radio System largely consisted of brief, pre-recorded sounds (such as the Sad Trombone Sound). During this preliminary investigation, individuals interviewed by the Bureau’s agents identified Mr. Larsen, a former volunteer with the Highland Park First Aid Squad (an authorized user of the Highland Park Radio System), as the person likely responsible for the unauthorized transmissions on the Highland Park Radio System. On July 24, 2018, the Bureau issued a Letter of Inquiry to Mr. Larsen asking him to state

⁹ 47 U.S.C. § 301.

¹⁰ 47 CFR § 90.20.

¹¹ 47 CFR § 90.403.

¹² 47 CFR § 90.405.

¹³ 47 CFR § 90.425.

whether he was the source of the unauthorized transmissions. The Bureau granted Mr. Larsen several extensions of time to respond to the Letter of Inquiry so that he could confer with counsel. On August 20, 2018, the complainant contacted the Bureau and related that the unauthorized transmissions had ceased. On October 3, 2018, Mr. Larsen responded, through counsel, to the Letter of Inquiry. In his response, he denied making the unauthorized transmissions identified in the Letter of Inquiry.

5. On October 17, 2018, shortly after Mr. Larsen submitted his response to the Letter of Inquiry, the complainant contacted the Bureau and stated that unauthorized operations had resumed. The Bureau resumed its investigation and used a combination of investigatory techniques and specialized equipment to trace the source of the transmissions. On March 27, 2019, four of the Bureau's agents traveled to Highland Park to investigate the unauthorized transmissions on a frequency licensed for use by the Highland Park Radio System. One pair of agents used direction-finding equipment at a fixed location near the complainant's residence, while another pair of agents conducted mobile direction finding of Mr. Larsen's vehicle in transit. The four agents observed Mr. Larsen pull over to the side of the road on the way to his home. The four Bureau agents observed (a) that during the brief stop, Mr. Larsen remained in his vehicle, (b) while stopped, a brief transmission consisting of the Sad Trombone Sound emanated from the direction of Mr. Larsen's vehicle on a frequency licensed for use by the Highland Park Radio System, and (c) following the transmission of the Sad Trombone Sound, Mr. Larsen resumed his drive to his residence. On April 10, 2019, three of the Bureau's agents returned to Highland Park to observe Mr. Larsen. The agents observed Mr. Larsen repeat the behavior observed on March 27, including a transmission containing the Sad Trombone Sound emanating from Mr. Larsen's vehicle.

6. Mr. Larsen and the Bureau engaged in settlement negotiations. To settle this matter, the Bureau and Mr. Larsen enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** Mr. Larsen agrees that the Bureau has jurisdiction over him and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Mr. Larsen agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Mr. Larsen concerning the matters that were the subject of the Investigation. In the absence of new material evidence, the Bureau also agrees that it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of Mr. Larsen's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.¹⁴

¹⁴ See 47 CFR § 1.93(b).

11. **Admission of Liability.** Mr. Larsen admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10 herein, that his actions referenced in paragraph 5 herein violated section 301 of the Act and the Part 90 Public Safety Rules.

12. **Compliance Commitment.** Mr. Larsen has ceased unauthorized use or operation of, and in the future will not engage in unauthorized use, operation, or provide material assistance to another in the unauthorized use or operation of, any radio station. Any unauthorized use or operation of, or provision of material assistance to another in the unauthorized use or operation of, a radio station by Mr. Larsen will, at a minimum, violate section 301 of the Act and the terms of this Consent Decree. For the avoidance of doubt, any violations of section 301 of the Act or the Part 90 Public Safety Rules by Mr. Larsen after the Effective Date shall be considered “new material evidence” for purposes of the representations and covenants set forth in paragraph 10. Within fifteen (15) calendar days of any noncompliance with section 301 of the Act, with the Part 90 Public Safety Rules, or with the terms and conditions of this Consent Decree, Mr. Larsen shall report such noncompliance to the Field Director, Office of the Field Director, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to matthew.gibson@fcc.gov and field@fcc.gov; any failure to report such noncompliance will violate the terms of this Consent Decree.

13. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraph 12 (compliance commitment paragraph) of this Consent Decree shall expire ten (10) years after the Effective Date.

14. **Voluntary Surrender of Amateur License.** In consideration of the termination of the Investigation, and in express reliance on the provisions of paragraph 10 herein, Mr. Larsen hereby (a) surrenders for cancellation his license to operate in the amateur radio service using call sign WS2L, and (b) agrees that he will not seek a new license to operate in the amateur radio service for a period of three (3) years following the Effective Date.

15. **Voluntary Surrender of Equipment.** In consideration of the termination of the Investigation, and in express reliance on the provisions of paragraph 10 herein, Mr. Larsen hereby surrenders to the Commission for destruction any radio equipment in his possession capable of transmitting on 453.850 MHz or 458.850 MHz; *provided*, however, that Mr. Larsen shall not be required to surrender any such radio equipment issued to him by his employer or any public safety organization for which he is a volunteer in good standing. By executing this Consent Decree, Mr. Larsen certifies to the Commission that he has tendered all radio equipment subject to this paragraph 15 to his attorney, Leonard R. Boyer, Esq., who hereby agrees to hold any such tendered equipment and to surrender it to a Bureau agent upon request. Within thirty (30) days following the Effective Date, a Bureau agent shall contact Mr. Boyer to arrange for Mr. Boyer to complete the surrender of any radio equipment tendered by Mr. Larsen.

16. **Civil Penalty.** Mr. Larsen shall pay a civil penalty to the United States Treasury in the amount of Seven Thousand, Five Hundred Dollars (\$7,500) (Civil Penalty), with an initial payment of Six Hundred Twenty-Five Dollars (\$625) (Initial Payment) and eleven (11) quarterly installment payments, each in the amount of Six Hundred Twenty-Five Dollars (\$625), paid over the course of a thirty-three (33) month period (each, an Installment Payment). The Initial Payment shall be made within thirty (30) calendar days of the Effective Date. Thereafter, the Installment Payments are due and payable on the fifteenth (15th) day of the last month of each calendar quarter, starting on September 15, 2019. Mr. Larsen acknowledges and agrees that, upon execution of this Consent Decree, the Civil Penalty (including, for the avoidance of doubt, the Initial Payment and each Installment Payment) shall become a “Claim” or “Debt” as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996

(DCIA).¹⁵ Mr. Larsen shall send electronic notification of payment to matthew.gibson@fcc.gov and field@fcc.gov on the date payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),¹⁶ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹⁷

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day as the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing the FCC Form 159, enter the NAL/Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).¹⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-database/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

17. **Suspended Penalty.** Mr. Larsen further agrees that, upon an Event of Default (as described below in paragraph 18), he will pay a further civil penalty to the United States Treasury in the amount of Thirty-Two Thousand, Five Hundred Dollars (\$32,500) (Additional Civil Penalty). Mr. Larsen acknowledges and agrees that upon an Event of Default, the Additional Civil Penalty shall also become a "Claim" or "Debt" as defined in section 3701(b)(1) of the DCIA,¹⁹ and all procedures for collection of the Additional Civil Penalty may, at the Commission's discretion, be initiated against Mr. Larsen.

¹⁵ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996) (DCIA).

¹⁶ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

¹⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e mail at ARINQUIRIES@fcc.gov.

¹⁸ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁹ See 31 U.S.C. § 3701(b)(1).

18. **Event of Default.** Mr. Larsen agrees that an Event of Default shall occur upon (a) the failure to pay the Civil Penalty to the U.S. Treasury on or before the dates specified in paragraph 16; (b) within ten (10) years of the Effective Date, the release of an order by the Commission, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order, finding that Mr. Larsen violated section 301 of the Act or the Part 90 Public Safety Rules; or (c) an admission of non-compliance required by paragraph 12.

19. **Interest, Charges for Collection, and Acceleration of Maturity Date.** Upon an Event of Default, all procedures for collection permitted by the DCIA and other provisions of law²⁰ may, at the Commission's discretion, be initiated and the following shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Mr. Larsen: (a) any unpaid Civil Penalty referenced in paragraph 16, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (b) the Additional Civil Penalty referenced in paragraph 17, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (c) any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717; and (d) any administrative charge(s), including the costs of collection, litigation, and attorneys' fees.

20. **Waivers.** As of the Effective Date, Mr. Larsen 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 Adopting Order. Mr. Larsen shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Mr. Larsen nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Mr. Larsen shall waive any statutory right to a trial *de novo*. Mr. Larsen hereby agrees to waive any claims he may otherwise have under the Equal Access to Justice Act²¹ relating to the matters addressed in this Consent Decree.

21. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

22. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Mr. Larsen does not expressly consent) that provision will be superseded by such Rule or order.

24. **Successors and Assigns.** Mr. Larsen agrees that the provisions of this Consent Decree shall be binding on his successors and assigns.

25. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

²⁰ See 31 CFR Part 900, *et seq.*

²¹ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

26. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

27. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

28. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

29. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

David S. Larsen, Sr.

Date

Solely for purposes of paragraph 15:

Leonard R. Boyer

Date