

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of HENRY W. MENEFEE, MADISONVILLE, TEX. Suspension of Restricted Radiotele- phone Operator Permit and Amateur Radio Operator License and Revocation of Amateur Radio Station License	}	Docket No. 10048
---	---	------------------

APPEARANCES

Henry W. Menefee on behalf of himself; and *Douglas Annello*
on behalf of the Federal Communications Commission.

INITIAL DECISION*

Preliminary Statement

1. On May 29, 1951 pursuant to §§303(m) (1) (A) and 312(a) of the Communications Act of 1934, as amended, the Commission adopted an Order suspending the Restricted Radiotelephone Operator Permit and Amateur Radio Operator License of Henry W. Menefee, Connors Community, Madisonville, Texas, for the remainder of their respective license terms and revoking his Amateur Radio Station License (W5RAS) on the basis of alleged violations of §§301 and 325 of the Communications Act of 1934, as amended. The alleged violations are these: that Menefee on various occasions during the period November 21, 1950 to November 27, 1950, and for approximately sixty days prior thereto, engaged and participated in the operation of an unlicensed television station at Madisonville, Texas; and that this licensee, on various occasions during the period November 21, 1950 to November 27, 1950, and on occasions prior thereto, while engaging and participating in the operation of the unlicensed television station as aforesaid, rebroadcast television programs transmitted from Station KPRC-TV, at Houston, Texas, without the consent of the licensee of Station KPRC-TV. It was further ordered that within fifteen days of the receipt by Menefee of a copy of the above order he might make written application for hearing thereon, whereupon the order automatically would be held in abeyance until the conclusion of the proceedings.

2. On June 12, 1951 Menefee filed with the Commission a statement setting forth the circumstances under which he became involved in the matter of the alleged violations and apparently

* Initial Decision adopted as Decision of the Commission by order adopted February 25, 1952.

requesting a hearing therein. By Order dated August 29, 1951, the Commission designated for hearing the matter of the suspension and revocation of the above-mentioned licenses before a Commissioner at a time and place later to be specified, upon the following issues:

1. To determine whether said licensee, on various occasions, particularly during the period November 21, 1950 to November 27, 1950, and for approximately sixty days prior thereto, engaged and participated in the operation of a television station at Madisonville, Texas, without a license from this Commission as required by §301 of the Communications Act of 1934, as amended.

2. To determine whether said licensee, on various occasions, particularly during the period November 21, 1950 to November 27, 1950, and on occasions prior thereto, while engaging and participating in the operation of such television station as aforesaid, rebroadcast television programs transmitted from Station KPRC-TV, without the consent of the licensee of KPRC-TV, as required by §325 of the Communications Act of 1934, as amended.

3. If the said licensee is found to have committed the above-mentioned acts, to determine whether there are any facts and circumstances in connection therewith which would warrant a change in the Commission's Order of Suspension and Revocation.

3. On November 14, 1951 the Commission ordered that a hearing in the above-entitled matter be held commencing at 10:00 a.m. on the 14th day of December 1951 at Houston, Texas and it further ordered that the undersigned Commissioner be assigned to preside at the hearing. The hearing was held at Houston, Texas on December 14, 1951 and the hearing was closed on that date. The record was kept open until January 4, 1952 for the purpose of receiving in evidence any statements relating to the character of Menefee which he desired to submit. The record was closed on January 4, 1952.

FINDINGS OF FACT

4. Henry W. Menefee, twenty-five years of age, respondent herein, holds a Restricted Radiotelephone Operator Permit (RP-9B-2099) which will expire on May 28, 1953 and a Class B Amateur Radio Operator License and Amateur Radio Station License (W5RAS), both of the latter expiring on January 13, 1955. During World War II, respondent served in the United States Navy for a period of two and one-half years with duty as a fireman, first class and then with the rating of electrician in the submarine service. Upon his return to civilian life, respondent operated a radio shop in Madisonville, Texas.

5. From 1948 until May of 1950, Mr. Herschel Roberts, who has been residing in Houston, Texas since June of 1950, was a

partner in a radio appliance store in Madisonville, Texas. He became interested in the sale of television receivers in Madisonville, and in fact had sold one television receiver in that vicinity. To provide the citizens of Madisonville with an improved television signal, Roberts conceived the idea of erecting a television booster station in Madisonville for the purpose of retransmitting signals from KPRC-TV, Houston, Texas. and KRLD-TV, Dallas, Texas. Roberts believed that there was a panel or band set aside in the radio band 420 to 450 megacycles for amateurs or experimentation. Knowing that respondent held an amateur operator license, Roberts approached him to have him build the set and he was informed by respondent that he could not do this.

6. Roberts then contacted Mr. L. W. Peay of the Development Engineering Company of Houston, Texas with reference to constructing a television booster station in Madisonville.¹ On May 30, 1950 respondent assisted Roberts and Peay in erecting an 80 foot tower and antenna system on the property of one Abbott, situated about one mile east of Madisonville. Later, respondent, Roberts and Peay installed a 450 megacycle Millen transmitter with a converter, with rated power of about 50 to 75 watts which reradiated on Channel 2. This was later moved up to about 80 megacycles. A time clock with settings at approximately 3:00 p.m. and 12:00 midnight was installed by Roberts purportedly for the purpose of automatically activating and deactivating the equipment. Roberts financed the complete operation.

7. Respondent testified that when Roberts or Peay came to Madisonville to make adjustments on the equipment he was present and stayed there with them to help in any way he could. He made outside tests and worked on the television receiver to try to improve its modulation into the transmitter.

8. Mr. J. E. Reed, of Madisonville, testified that he was not able to get reception on Channels 2, 3 or 4 due to interference. Reed called in respondent to check his television set to determine why he was not getting reception. Respondent told Reed that he did not know exactly what was causing the interference. He then informed Reed that the operators of the booster station were picking up signals from KPRC-TV, Houston, and rebroadcasting its television programs.

9. About the first of November 1950, Reed complained to the Houston office of the Commission that his television receiver was subject to interference. About November 27, 1950, three Commission representatives went to Madisonville to conduct tests. By the use of location methods and by noting the frequency of 75.5 megacycles, the transmitter was definitely located as being on the Abbott property. The only transmitter in that location transmitting on that frequency was the illegal booster transmitter. The transmitter was measured as operating on 75.5 megacycles, the

¹ On May 29, 1951, the Commission designated for hearing the application of Peay for renewal of his radiotelephone first class operator license. Upon Peay's failure to respond to Commission correspondence, the application was dismissed without prejudice by Memorandum Opinion and Order dated October 4, 1951 (released October 9, 1951).

main transmitting frequency, and a signal of 80 megacycles was also detected. The representatives visited the Reed residence; interference to both the video channel and the aural channel of Channel 2 (KPRC-TV) could be observed from the operation of the illegal transmitter.

10. Respondent granted the Commission representatives entry into the property on which the transmitter was located and was cooperative at all times. He explained the operation to the representatives; that the signals were received from KPRC-TV in Houston and passed through the television receiver and were rebroadcast through the unlicensed transmitter. Respondent told the representatives that he had adjusted and operated the apparatus including the transmitter.

11. Respondent testified that he did not violate any of the rules of the Commission knowingly or wilfully; that he was given to understand that permission had been obtained for the operation of the station, otherwise he would not have operated or even thought of operating the station. Respondent further testified that Peay indicated that he had authority to erect the station; that he told him everything was all right, that it was all taken care of. Respondent did not ask to see the permit. The presiding Commissioner asked the respondent what he understood by the words "everything is taken care of." Respondent answered that he was told, if any reference was made to the station or anyone wanted to know anything about the station, to refer inquiries to Peay in Houston. In further response, he said that he thought that Roberts told his father that permits had been obtained and the permission of KPRC-TV received to operate the booster station and rebroadcast programs. Peay, as mentioned above, has been a holder of a first class radiotelephone operator license. He testified that he knew specifically that the operation under inquiry would have to be authorized by the Commission. He did know that it was against the Commission's Rules. He testified that he was led to believe that such stations were prevalent on the West Coast and that the Commission was apparently taking no action against them but more or less overlooking them for the present time.²

12. Roberts testified that he did not at any time directly or by inference lead anyone to believe that authorization had been obtained for such a station. Roberts further testified that he could not remember that respondent gave him any indication that operating on the amateur band broadcasting to the public was in violation of the amateur rules. Roberts testified that he believed that it was necessary to have a license to operate a radio transmitter, although he had never read it anywhere. He stated that he did not think the license was necessary until the equipment would operate as desired. He was under the impression that, although a booster station was not entirely legal, it was

² Since July of 1948, the Commission obtained information concerning the operation of fourteen unlicensed television installations and appropriate action was taken in each case.

permissible in that it performed a service to the majority of people and a disservice to none.

13. In response to the question, "Of course you knew if there was no permission granted for this station that it was illegal?" respondent answered, "Yes, sir, I did know that."

14. Mr. Jack Harris, general manager of Station KPRC-TV, Houston, testified that he knew of no permission having been granted to Roberts, Peay or respondent to rebroadcast television signals from Station KPRC-TV.

15. Reed testified that he had known respondent about seventeen years and that he has a good reputation in the community of Madisonville. Three other citizens of the Madisonville community, in a sworn statement (see Paragraph 3, Preliminary Statement), said they had known respondent for a number of years and that he is a credible person, worthy of any confidence or responsibility shown him.

CONCLUSIONS

1. Section 301 of the Communications Act of 1934, as amended, provides in part that "no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act." It is clear from the evidence that the respondent engaged and participated in the operation of an illegal television transmitter in violation of §301.

2. Section 325, subsection (a) of the Communications Act of 1934, as amended, states in part ". . . nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station." The record shows that the general manager of Station KPRC-TV, Houston, Texas, knew of no permission being granted to respondent to rebroadcast the television signals of that station. The record further shows that television signals were rebroadcast by the unauthorized television transmitter and that this transmission caused interference to the reception of a properly licensed television station.

3. After the illegal transmitter had been located by the field engineers of the Federal Communications Commission, the respondent cooperated freely with them by showing them the apparatus and explaining fully the *modus operandi* as well as describing the part he played in constructing and operating the illegal television transmitter. The respondent was issued an amateur operator and station license under date of January 13, 1950 and a restricted radiotelephone operator permit under date of May 28, 1948. There are no records of any other violations since the issuance of these authorizations. The respondent served in the submarine service of the United States Navy for a period of two and one-half years as a fireman, first class, and then with the

rating of electrician. Witnesses have testified as to the good character and standing of the respondent in the community.

4. There is no doubt that respondent was gullible in accepting a statement from one of the parties who was promoting the operation of the illegal television transmitter that authority had been obtained for the construction of the station. The respondent, as a holder of an amateur station and operator license and restricted radiotelephone operator permit, should have been sufficiently familiar with the Commission's procedures to have insisted upon a display of the authorization. He was negligent in failing to do so. The respondent, however, has stated in the record, and we credit his testimony, that he did not violate knowingly or wilfully any of the requirements of the Federal Communications Commission.

5. In view of the good character attested by witnesses, the naval service of the respondent, his previous record as a holder of authorizations from the Commission, and the circumstances of respondent's connection with the operation of the unauthorized station, described above, it is the opinion of the Presiding Officer that the ends of justice would not be further met by proceeding with revocation of his amateur radio station license and suspension of his amateur operator license and restricted radiotelephone operator permit. Accordingly, it is ordered, this 21st day of January, 1952, that the Commission's Order of Suspension and Revocation dated May 29, 1951, is hereby rescinded and revoked.

FEDERAL COMMUNICATIONS COMMISSION,

GEORGE E. STERLING, *Presiding Commissioner*.

43 F.C.C.