

**Before the
Federal Communications Commission
Washington, DC 20554**

FCC 18M-05

In the Matter of)	WT Docket No. 08-20
)	
WILLIAM F. CROWELL)	FCC File No. 0002928684
)	
Application to Renew License for Amateur)	
Radio Service Station W6WBJ)	

ORDER

Issued: July 9, 2018

Released: July 9, 2018

I. BACKGROUND

1. On February 12, 2008, the Wireless Telecommunications Bureau issued a Hearing Designation Order (*HDO*)¹ to determine whether the application of William F. Crowell (Crowell) to renew his license for Amateur Radio Service Station W6WBJ should be granted, in light of reports that Crowell “willfully and repeatedly” engages in unlawful Commission-related activities.²

2. The *HDO* set specific issues to determine whether:

- a. William F. Crowell violated Section 333 of the Communications Act of 1934 and Section 97.101(d) of the Commission’s Rules, by intentionally interfering with and/or otherwise interrupting radio communications;
- b. William F. Crowell violated Section 97.113(b) of the Rules by transmitting one-way communications on amateur frequencies;
- c. William F. Crowell violated Section 97.113(a)(4) of the Rules by transmitting indecent language;
- d. William F. Crowell violated Section 97.113(a)(4) of the Rules by transmitting music;

¹ *In re William F. Crowell*, Hearing Designation Order, WT Docket No. 08-20, DA 08-361 (rel. Feb. 12, 2008).

² *HDO* at 1.

- e. William F. Crowell is qualified to be and remain a Commission licensee; and
- f. The captioned application filed by William F. Crowell should be granted.³

The Commission by delegation designated the case for hearing before an FCC Administrative Law Judge “at a time and place to be specified in a subsequent *Order*.”⁴

3. The next order was the designation order of the Chief Judge on February 15, 2008, in which he designated Administrative Law Judge Arthur I. Steinberg to serve as Presiding Judge. That order also directed “that all hearing proceedings shall take place in the Office of the Commission, Washington, D.C.”⁵ Thus, it was unambiguous from the start that all proceedings would be held in Washington, D.C.

4. On March 30, 2017 – nine years after the designation order stating that all proceedings would be in D.C. – Crowell filed a Motion for a Field Hearing. On April 7, 2017, Chief Judge Sippel⁶ denied the motion based on the *HDO* and Judge Steinberg’s order above, the public interest factors enumerated by the Enforcement Bureau (Bureau),⁷ and Crowell’s failure to point to any competing public interest considerations.⁸ Indeed, Crowell’s motion was based solely on conclusory statements of his lack of means.

5. On the same day, the Presiding Judge issued *Order*, FCC 17M-18 (rel. April 7, 2017) to address 47 CFR § 1.245. On April 3, 2017, Crowell had filed an appeal from the Presiding Judge’s denial of Crowell’s motion to disqualify the ALJ.⁹ While the Presiding Judge deemed the appeal untimely, he forwarded the appeal to the Commission as a contingency, which triggered 47 CFR § 1.245(b)(4). That provision states that “[t]he hearing shall be suspended pending a ruling ... by the Commission” on whether the Presiding Judge should be disqualified. In light of the required suspension, the Presiding Judge ordered in FCC 17M-18 that no further motions and pleadings be filed, with limited exceptions for responsive pleadings to motions already filed. The Presiding Judge also separately stayed the case on the basis of a NAL/FO proceeding,¹⁰ but was later informed that the Department of Justice had decided not to prosecute the case.

³ *HDO* at 3-4.

⁴ *HDO* at 3 para. 10.

⁵ *Order*, FCC 08M-08 (rel. Feb. 15, 2008).

⁶ Chief Judge Richard L. Sippel became the Presiding Judge in this case following Judge Steinberg’s retirement. *See Reassignment Order*, FCC 09M-04 (rel. Jan. 8, 2009).

⁷ Enforcement Bureau’s Opposition to Crowell’s Motion for a Field Hearing 2 (March 30, 2017).

⁸ *Order*, FCC 17M-19 (rel. April 7, 2017).

⁹ *See Memorandum Opinion & Order*, FCC 17M-13 (March 28, 2017).

¹⁰ *Order*, FCC 17M-21 (rel. April 10, 2017).

6. On April 26, 2018, the Commission issued an order denying Crowell's motion to disqualify the Presiding Judge.¹¹ Following the Commission's decision, on May 31, 2018, the Presiding Judge lifted the stay and ordered that each party submit a Status Report indicating their readiness for hearing.¹² On June 7, 2018, the Bureau and Crowell submitted separate Status Reports, both stating that Crowell is refusing to attend a hearing in Washington, D.C.¹³

7. Subsequently, on June 12, 2018, the Enforcement Bureau filed a motion to dismiss Crowell's renewal application for failure to prosecute and to terminate the proceeding (Motion to Dismiss). Crowell filed an opposition on June 22, 2018. On June 29, 2018, the Bureau filed a reply. For the reasons stated below, the Bureau's Motion to Dismiss is granted.

II. DISCUSSION

A. Failure to Prosecute

8. The Bureau argues that the renewal application should be dismissed under 47 CFR § 1.221(c) because Crowell's refusal to appear at a hearing in D.C. "has the same practical effect" as if he had failed to file a Notice of Appearance when the HDO was first issued.¹⁴ As the Bureau puts it, "The purpose of Section 1.221(c) is self-evident – if the applicant, as the entity with the burden of proof, does not commit to appearing at the hearing and presenting evidence on the designated issues, there is no need for a hearing."¹⁵

9. The Presiding Judge agrees. Moreover, at least one prior FCC case has come to the same conclusion. In *In re Edward B. Christopher*, 25 F.C.C.2d 699 (1970), the application was designated for hearing "because of substantial questions concerning the applicant's qualifications to be a licensee,"¹⁶ which is also at issue here. Christopher claimed he could not attend a hearing in Washington, D.C. "because of a lack of financial resources and because of a physical disability."¹⁷

10. But as the Commission put it, "an applicant, in seeking a license [or the renewal thereof], must establish that he possesses all of the qualifications required for such a privilege."¹⁸ Given Christopher's unwillingness to appear for the purpose of establishing his qualifications,

¹¹ *Memorandum Opinion & Order*, FCC 18-52 (rel. April 26, 2018).

¹² *Status Order*, FCC 18M-03 (rel. May 31, 2018).

¹³ Applicant's Status Report at 1; Enforcement Bureau's Status Report at 2. *See also* Bureau Motion at 3-4 & Ex. B.

¹⁴ Motion to Dismiss at 5. *Cf. HDO* at 4, para. 12 ("[P]ursuant to ... 47 C.F.R. § 1.221(c), if William F. Crowell fails to file a written appearance ... the Presiding Administrative Law Judge SHALL DISMISS the captioned application with prejudice for failure to prosecute.").

¹⁵ Motion to Dismiss at 4.

¹⁶ *Christopher*, 25 F.C.C.2d at 699.

¹⁷ *Id.*

¹⁸ *Id.*

the Commission dismissed Christopher's application with prejudice for failure to prosecute under 1.221(c), and terminated the proceeding.¹⁹ The Presiding Judge sees no reason why the same result should not obtain here.

B. Bad Faith

11. At the beginning of the case, Crowell filed a Notice of Appearance stating that he would "indeed appear on the date fixed for hearing."²⁰ Crowell claims that he purposefully phrased his Notice of Appearance so as to avoid agreeing to appear in Washington, D.C., even though he did not explicitly convey his refusal to appear in D.C. at that time.²¹ Such a disingenuous ploy further demonstrates Crowell's bad faith, which has been evident throughout this proceeding and caused the Presiding Judge to order Crowell to show why an abuse of process issue should not be added.²²

12. Moreover, as the Bureau points out, Crowell's Opposition to the Motion to Dismiss does not dispute the substance of the motion, *i.e.*, that since Crowell has made clear that he will not appear for the hearing in D.C., the renewal application should be dismissed for failure to prosecute. Rather, Crowell uses his Opposition to try to further argue his Motion for a Field Hearing, which was already denied.

13. Nonetheless, since this is a dispositive order, the Presiding Judge will briefly expound on his reasons for preserving the original decision to hold the hearing in Washington, D.C.

C. Field Hearing

14. While the Commission may have at one time "developed a pattern" of scheduling evidentiary hearings where the station was located, it is "unfounded" to "interpret this as binding Commission policy."²³ Ultimately, "[t]here is no right to a local hearing under Section 1.253 of the Commission's Rules."²⁴ Rather, the location of hearings is based on "public interest considerations."²⁵

¹⁹ *Id.* at 700.

²⁰ Motion to Dismiss, Exh. A.

²¹ Applicant's Opp. to Enforcement Bureau's Motion to Dismiss Renewal Application at 4 ("[M]y Notice of Appearance herein was carefully worded in agreeing to appear only at the date and time of the hearing herein, but not at Washington, D.C.").

²² *See Order*, FCC 10M-04 (rel. July 29, 2010). The Presiding Judge has not yet ruled on that issue, but will revisit it if the Commission reopens proceedings following this order.

²³ *In re Cathryn C. Murphy*, 23 F.C.C.2d 204, 205 (1970).

²⁴ *In re United Broadcasting Co.*, 93 F.C.C.2d 482, 488 (1983).

²⁵ *Id.*

15. Crowell has not pointed to any public interest factors weighing in favor of a field hearing, having failed to show why a complete record and a fair and impartial hearing²⁶ cannot be obtained in Washington, D.C., aside from his own unwillingness to travel. Nor has Crowell shown any other reason why public funds should be expended and Commission resources burdened for a field hearing. Indeed, Crowell has offered no justification for a field hearing beyond his own convenience and conclusory assertions of financial hardship.

D. Financial Hardship

16. Crowell is correct that Section 1.224 of the Commission's Rules, regarding motions to proceed *in forma pauperis* (IFP), only extends to licensees who "cannot carry on [their] livelihood without the radio license at stake in the proceeding."²⁷ But far from entitling Crowell to a field hearing as a non-remunerative amateur radio licensee, it has the opposite effect: Crowell is not entitled to *any* accommodation on the basis of financial hardship.

17. This is further confirmed by the Commission's IFP rulemaking, which states, "In the case of [an indigent] licensee who is placed in jeopardy of losing the license on which his livelihood depends, we have concluded that assistance is required as a matter of fairness...."²⁸ In other words, assistance is only required where the licensee's livelihood depends on the license, which Crowell has admitted is not the case here.

18. The Presiding Judge exercised his discretion to apply the IFP standard to Crowell's requests to appear at the prehearing conferences by speakerphone,²⁹ but denied Crowell's motion for a field hearing. Being allowed to appear by speakerphone for a prehearing conference regarding procedural matters is a far cry from expecting the government to expend substantial resources to hold the full evidentiary hearing at a location of the licensee's convenience.

III. CONCLUSION

19. Finding good cause shown, the Bureau's Motion to Dismiss IS GRANTED. Accordingly, the application of William F. Crowell (Crowell) to renew his license for Amateur Radio Service Station W6WBJ IS HEREBY DISMISSED with prejudice.

20. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

²⁶ See *Cathryn C. Murphy* at 205.

²⁷ 47 CFR § 1.224(a)(1).

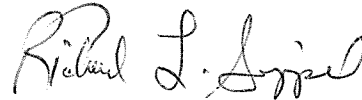
²⁸ *Rules & Policies to Facilitate Participation of Indigent Persons in Comm'n Proceedings*, 61 F.C.C.2d 1143, 1145 (1976).

²⁹ Crowell never attempted, and therefore failed, to demonstrate his claimed financial hardship. Even if the IFP provision applied to Crowell on its face, he would need to "detail [his] income and assets ... and his financial obligations and responsibilities" for relief, 47 CFR § 1.224(b), which he has not done. See also *Rules & Policies to Facilitate Participation*, 61 F.C.C.2d at 1146 ("Vague claims of poverty or hardship will not suffice.").

21. This case IS CERTIFIED to the Commission in accordance with 47 CFR § 1.92.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION³⁰

A handwritten signature in black ink, reading "Richard L. Sippel". The signature is written in a cursive style with a large, stylized initial "R".

Richard L. Sippel
Chief Administrative Law Judge

³⁰ Courtesy copies of this Order will be sent to all counsel of record on the date of issuance.