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

FCC 10M-04

In the Matter of	)	WT Docket No. 08-20
	)	
WILLIAM F. CROWELL	)	File No. 002928684
	)	
	)	
Application to renew License for	)	
Amateur Radio Service Station W6WBJ	)	
	)	

MEMORANDUM OPINION AND ORDER

Issued: July 29, 2010 **Released: July 29, 2010**

BACKGROUND

1. On April 18, 2010, the Presiding Judge issued *Order* FCC 10M-01, requiring a Joint Status Report by May 17, 2010, and Trial Briefs by May 24, 2010. On April 19, 2010, *Applicant's Motion To Vacate Dates For Filing Joint Status Report And Trial Brief* ("Motion") was filed by William F. Crowell ("Mr. Crowell"). On April 22, 2010, the Enforcement Bureau ("Bureau") filed its *Opposition To Motion To Vacate* ("Opposition").

2. Questions about status reporting were dealt with by the Presiding Judge on May 7, 2010.[1] On May 17, 2010, the parties timely filed individual Status Reports. *See Order* FCC 10M-01.[2] So the date for filing Status Reports is now moot since *individual* Status Reports were authorized and filed. The filing date for Trial Briefs was postponed to allow discovery until October 22, 2010. *See Order* FCC 10M-03. Thus, the Motion to vacate the filing date for Trial Briefs is also moot.

3. There *should be* nothing further to write. However, due to the offensive nature of contents of the Motion, certain more offensive assertions will be addressed here.

ABUSE OF PROCESS

4. Mr. Crowell warps a rule which gives the Presiding Judge power to grant continuances and extensions of time. *See* 47 C.F.R. § 1.205 (2009). It is clear to practitioners and parties that before obtaining a continuance or time extension, the

[1] *See* E-mail from Presiding Judge to Mr. Crowell and Bureau Counsel Ms. Judy Lancaster dated May 7, 2010 permitting individual reporting. (Copy attached.)
[2] The date received is based on the FCC Mail Room stamp dated May 17, 2010, and without further direct evidence, the May 17th date will prevail here.

Presiding Judge must find that good cause exists to delay a proceeding in order to accommodate the moving party. *Id.* Mr. Crowell's offer of "good cause" is novel in its questioning Commission motive while burdening this case with spurious assertions. Questions about the Commission's motive for setting this case down for hearing; the Presiding Judge's moral qualifications to adjudicate issues of character; and disingenuous charge of attempted censorship of Mr. Crowell's speech on the part of the Commission and the Presiding Judge, require suspending belief and judgment. *See Motion* at 4–5. These are hallucinatory assertions. Dwelling on concocted charges and accusations involves, unfortunately, a waste of the Commission's time.

Unrelated Conduct

5. Mr. Crowell chides the Presiding Judge for not requiring conduct that was litigated in unrelated fact-intensive cases to also be litigated here. Why? Mr. Crowell cries foul because he is not charged with child molestation or computer hacking, litigated conducts that were issues in other cases. To state the obvious, cases that are based on licensee conduct can only be decided on the facts of that conduct, which conduct becomes allegations set in a Hearing Designation Order ("HDO"). Mr. Crowell's course of conduct which is the subject of this litigation involves only that conduct set forth in the HDO. Those facts are the allegations that constitute notice of what he must defend.[3] The fact intensive allegations and issues in this case's HDO could alone, if proved, provide a basis for denying license renewal. *See In re Policy Statement on Character Qualification*, 5 F.C.C. Rcd. 3252, 3252 (1990) ("1990 Character Statement").

Gratuitous Disrespect

6. Mr. Crowell goes on to advance arguments which are disrespectful and needlessly burdensome due to their irrelevance, and he argues mischaracterizations of the law. For example, the Motion asserts, without any analysis, that the Commission cannot use "the character rule . . . to go on a witch hunt or to punish those who criticize it" by allowing the Wireless Telecommunications Bureau "to exercise[] [its] rubber stamp by issuing a [*HDO*]." *Motion* at 7. Mr. Crowell charges that a former Bureau Chief discussed this case in speeches throughout the country, which charges are factually unsupported. *Id.* at 6. Mr. Crowell asserts that the Presiding Judge does not possess qualifications to adjudicate issues of character, and also lacks sufficient knowledge of Commission rules, regulations and policy governing amateur radio. Such gratuitous insults against a Federal official holding a merit position in the Federal service that requires validated qualifications, and who has been hearing APA cases for the Commission for twenty-five years, are at a minimum disrespectful, and may rise to becoming offensive in the extreme. Spurious characterizations of the Bureau and Bureau Counsel which lack any basis or foundation are likewise offensive, groundless, useless and even potentially inflammatory.

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[3] *See* 5 U.S.C. § 558(c)(1) (2006) (in withholding or revoking a license, a licensing agency must give "notice . . . in writing of the facts or conduct which may warrant the action . . . ."). A denial of such notice may constitute a denial of due process.

Inapt and Inept Showing of Good Cause

7. With respect to the Motion's legal merits, Section 1.205 of the Rules [47 C.F.R. 1.205 (2009)] provides that continuances or extensions "may be granted" only upon a showing of good cause. Here, Mr. Crowell has failed to show any cause, and relies on his own personal characterizations of the Enforcement Bureau, Bureau Counsel and the Presiding Judge. He argues unsupported allegations and unsupported facts that are neither informative nor relevant to this case. Mr. Crowell's Motion simply fails facially to meet the basic requirement for showing "good cause."

Censorship Charge Without Substance

8. The Motion is found in part to lack substance. Mr. Crowell simply asserts, without citation to an order, document or transcript page, that "the Commission and Presiding [Judge were] trying to censor [his] speech as a condition of renewing [his] license. . . ." *Motion* at p. 5. In addition to lacking any basis in fact, reason, or motive, censorship is not a practice or a remedy that can be utilized in APA hearings, and is contrary to FCC policy that supports the First Amendment. Assertions of a perceived but unproven censorship are not relevant under the issues in this case, and are a distractive nuisance. Moreover, complaining about the Presiding Judge's decided cases having no relevance to this case in facts or in law, which were resolved against the Commission, is a time wasting frolic. The cases are not cited in the Motion for precedent, and the facts are wholly different from those at issue here.[4] The cases are: *David Titus*, 25 F.C.C. Rcd. 2390 (2010); *and Kevin David Mitnick*, 17 F.C.C. Rcd. 27028 (2002), which are cases decided by the Presiding Judge concerning – felonious hacking and grand larceny [*Mitnick*], and convictions of indecencies with minors [*Titus*] – facts and issues that are not present in this proceeding. Mr. Crowell was not a party in either case. The *Mitnick* case was disposed of by settlement approved by the Bureau, while the *Titus* case was decided on the merits against the Bureau due to a lack of proof. Mr. Crowell's arguments based on these cases are, perhaps hoping to embarrass the Presiding Judge, disingenuous and a total waste of time.

9. Mr. Crowell's commentaries on the character issue set against him are out of sync with the Communications Act, the Commission's rules, and the Commission's policies. The *HDO* alleges that Mr. Crowell has "intentionally interfere[ed] with . . . radio communications"; "transmit[ed] one-way communications on amateur frequencies"; "transmit[ed] indecent language"; and "transmit[ed] music" in violation of Commission rules. *In re Crowell*, 23 F.C.C. Rcd. 1865, 1867 (2008). Mr. Crowell asserts without any citation to authority that the Bureau must show a felony conviction of some kind as a condition to making a case of inappropriate behavior on the part of the

[4] For example, in *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 771 (1988), which Mr. Crowell cited in support of his censorship argument, the United States Supreme Court held that municipal ordinances "giving unfettered discretion" to a mayor in granting or denying annual licenses for news racks on public property were unconstitutional because it gave the mayor "unbounded authority to condition permits" as he deemed "'necessary and reasonable.'" *Id.* at 771. *City of Lakewood* does not apply here because the facts of this case do not involve licensing under the First Amendment, but involves only licensing under the Communications Act and Commission rules.

licensee. It raises the question – must a felony have been committed as a condition to denying a renewal? On the contrary, Commission *Policy Statements on Character* do not require that a showing of a felony conviction is mandated in order to assess a licensee's character. *See 1986 Character Statement,* 102 F.C.C. 2d at 1196–1197 (1986). *See also 1990 Character Statement*, 5 F.C.C. Rcd. 3252 (1990) (broadening types of felony convictions that may be considered – but not required – in determining character).

10. Presence of a felony conviction is not a pre-condition for denial of renewal based on an applicant's character. Rather, it is one factor that can be used – if present in the record – in assessing relevant non-FCC misconduct as a basis for license denial or revocation. Of course, fraudulent behavior – such as misrepresentation and lack of candor – can be considered for renewal denial when an "applicant's general integrity and future reliability [are] in doubt . . . ." 102 F.C.C. 2d at 1195–1196. Any FCC misconduct can be "predictive conduct" raising concerns about "future truthfulness and reliability." *Id.* at 1209. Since licensees must be trusted to comply with the Communications Act and Commission rules and policies, previous behavior showing "any violation of the Communications Act, Commission rules or Commission policies" goes directly to the heart of the matter, and clearly must be treated "as having a potential bearing on character qualifications". *Id.* at 1209–1210. But this case is narrowly drawn and involves only alleged violations of the Communications Act and Commission rules. So there is no requirement to seek out a criminal act – not limited to hacking or indecencies with minors – in order to consider denial of license renewal for FCC or non-FCC misconduct.

Allocating Burden of Proof

11. Though there is no Motion for Summary Decision, Mr. Crowell argues prematurely that the Bureau is failing to meet its burdens of proof. In support of this argument, Mr. Crowell cites two cases – *In re Application of Myron Henry Premus*, 17 F.C.C. 251 (1953) and *In re Application of Richard G. Boston*, Safety & Special Serv. Bureau, Docket No. 87346 (adopted: July 29, 1977)[5]. Mr. Crowell believes that these cases hold that the burden of proof must be allocated to the Bureau. To the contrary, in accordance with Sections 4(i) and 309(e) of the Communications Act of 1934 [47 U.S.C. §§ 4(i), 309(e) (2006) (Act)], the Commission has assigned the burden of proof to Mr. Crowell. *In re Crowell*, 23 F.C.C. Rcd. at 1868.

12. Section 309(e) of the Act empowers the Commission to designate a hearing regarding an application if "a substantial and material question of fact is presented . . . ." 47 U.S.C. § 309(e) (2006). It further provides that "the burden of proof shall be upon the applicant . . . ." *Id. See also* 5 U.S.C. § 556(d) (2006) ("[*e*]*xcept as otherwise provided by statute*, the proponent of a rule or order has the burden of proof") (*emphases added*). In the procedurally similar case of *Application of Herbert L. Schoenbohm*, 17 F.C.C. Rcd. 1369, 1372 (2002), the *HDO* assigned the burden of proof to Mr. Schoenbohm in accordance with Sections 4(i) and 309(e). Mr. Crowell similarly has the burden of proof in this case. *Compare In re Crowell*, 23 F.C.C. Rcd. at 1868, and *In re Schoenbohm*, 17

[5] A copy of *Boston* was provided by Mr. Crowell via e-mail to the Presiding Judge and Bureau Counsel, as a matter of courtesy.

F.C.C. Rcd. at 1372 (same burdens of proof placed on both licensees to show fitness to continue to be licensees).

Inapposite Cases Cited

13. The *Premus* case is outright inapposite to the case at hand. Mr. Premus was accused by other amateur radio operators of deliberately causing electrical interference and breaking into ongoing conversational communications calling fellow licensees "unbecoming names." *In re Premus*, 17 F.C.C. at 252. The Commission renewed Mr. Premus' amateur radio license due to evidentiary uncertainty on whether he criticized other operators out of a "personal dislike" or a "general desire to help." *Id.* at 256. Mr. Premus also introduced mitigating evidence of his good standing in the amateur radio community[6] and evidence showing "considerable provocation [on the part of the chief complainant]." *Id.* at 255. Mr. Premus candidly admitted his wrongdoing and promised to abide by Commission Rules in the future. *Id.* at 256. The Commission granted renewal but warned that if Mr. Premus were to "engage in further misconduct" they would then "determine whether [further] action [would be] appropriate." *Id.* The *Premus* case is a well reasoned decision made strictly on evidence that supported renewal. Therefore, it is irrelevant to the issues at hand. It is also mischaracterized by Mr. Crowell as holding that the Bureau is required to show actual intercepts, and that operators' complaint letters should not be used as evidence since they tend to be lies. *Premus* mentioned neither the Bureau's burden of proof nor recognition of a tendency to lie on the part of amateur radio licensees when filing complaints to the Commission about other licensee-operators. *Id.*

14. In the case of *In re Richard Boston*, Safety & Special Serv. Bureau, Docket No. 87346 (July 29, 1977), amateur licensees had combined to form an amateur radio net called "WCARS" to monitor 24/7 a certain frequency. The WCARS net had petitioned the Commission to set Mr. Boston's renewal application for hearing on allegations that Mr. Boston had interfered with the net's operations and had used obscene language. *See Boston*, at 1–2. The petition was denied. *Id.* at 3. By delegated authority, the Bureau granted Mr. Boston's renewal application after an investigation failed to find any "instance of willful or malicious interference or usage of obscene language by [Mr. Boston]." *Id.* The investigation further found deficiencies of proof in the utilization of recordings or call signs that were previously used by amateur operators involved in the net dispute. And the petitioners admitted that they did not have first-hand knowledge of Mr. Boston's misbehavior as they had alleged in their petition, an admission that was crucial to their credibility. *Id.* at 2–3. Contrary to Mr. Crowell's case articulation, the decision did not find a tendency to lie amongst the amateur community. Nor did it state or infer that the Commission had any burden of proof, noting that the Commission was not even a party to this case. The *Boston* case is irrelevant, and Mr. Crowell's summary

[6] Evidence of good behavior the Commission considered were: (1) Mr. Premus's public service for which he won an award from the American Radio Relay League after providing another service for more than two days handling "all eastern traffic from Cleveland" and (2) the voluntary willingness of fellow operators to either testify or write letters on behalf of Mr. Premus's service to the amateur radio community. *In re Application of Myron Henry Premus*, 17 F.C.C. 251, 254–255 (1953).

of *Boston's* holding to include a presumption that "ham radio operators lie to the Commission" is certainly misstated and perhaps misrepresented. *See Motion* at 11–12.

Possible Admissions

15. Rule 33 of the Federal Rules of Civil Procedure provides that a party may object to an interrogatory so long as the grounds of the objection are specific. FED. R. CIV. PROC. 33(b)(4).[7] According to the Notes of Advisory Committee on 1993 amendments to Rules ("Notes"), the objection "must be specifically justified, and . . . unstated . . . grounds for objection . . . [are ordinarily] waived."[8] *Id.* The Presiding Judge can reject improperly made objections to interrogatories, and thus consider such answers as admissions. And admissions can be admitted as evidence, such as a party's written statements in interrogatories.[9] FED. R. EVID. 801(d)(2). In his answers, Mr. Crowell first introduces a broadly vague objection indicating that the interrogatory is "irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence herein." *See Applicant's Supplemental Answers And Objections To Enforcement Bureau's First Set of Interrogatories Propounded To Him* (May 10, 2010) ("Applicant's Supplemental Motion"). He then consistently proceeds to answer the interrogatory in the affirmative.

16. For example, Mr. Crowell objected to Interrogatory No. 43 regarding use of indecent language, yet proceeded to admit that he had used such language. *Id.* After objecting to Interrogatory No. 47, Mr. Crowell proceeds to admit that he had used alleged indecent language. *Id.* He similarly objected and answered Interrogatory No. 48, ultimately admitting that he had transmitted recordings. *Id.* Mr. Crowell also objected to Interrogatory No. 62 and immediately admitted to posting adverse comments on a thirteen year-old amateur operator's site concerning her father, also an amateur licensee. *Id.* Mr. Crowell cannot use broad boilerplate objections to protect his subsequent answers from being used as admissions.[10] Commission Rules allow answers to interrogatories to be used against a party at hearing.[11] *See* 47 C.F.R. §§ 1.321(d), 1.323(b) (2009).[12]

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[7] The specificity requirement in the FRCP is identical to the specificity requirement found in the Federal Rules of Evidence in that the court may waive vague objections. *See* FED. R. CIV. PROC. 33 (Notes).

[8] The Notes state that Rule 33(b) "should be read in light of Rule 26(g)" which authorizes a court to sanction a party or attorney "making an unfounded objection to an interrogatory." FED. R. CIV. PROC. 33 (Notes).

[9] Rule 801(d)(2) states that "[a] statement is not hearsay if . . . [t]he statement is offered against a party and is the party's own statement . . . ." FED. R. EVID. 801(d). Rules of evidence "governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern formal hearings." 47 C.F.R. § 1.351 (2009).

[10] Mr. Crowell already has represented the accuracy of his answers to the interrogatories. That representation is now in the record and his answers should be considered as admissions, where appropriate. The Bureau may move to use these admissions during the hearing. Mr. Crowell may offer objections at the appropriate time.

[11] Mr. Crowell is an attorney, and is presumed to fully understand Commission rules and his responsibility as an officer of the court *See Applicant's Supplemental Motion*, 21 (answering Interrogatory No. 6). Mr. Crowell discloses that he graduated from Hastings College of Law in 1972, and was admitted to the California Bar in the same year. *Id.*

[12] Section 1.321(d) states, "[a]t the hearing (or in a pleading), any part or all of a deposition, so far as admissible, may be used against any party . . . ." 47 C.F.R. § 1.321(d) (2009). Section 1.323(b) states in

Possible Abuse of Process

17. The *1986 Character Statement* concluded that abuse of process in a Commission proceeding should be considered in an applicant's character review in connection with FCC-related misconduct. *See* 102 F.C.C. 2d at 1211. The Commission found that "harassment of opposing parties which threatens the integrity of the Commission's licensing processes, a type of abuse of process, will also continue to be considered as bearing on character." *Id.* Mr. Crowell's Motion has not furthered the judicial process; rather, the Motion has delayed and impeded the process. By way of illustration, Mr. Crowell attacks the "Commission's true character for suspecting him to be a "terrorist" by subjecting his pleadings to irradiation (FCC reaction to 9/11); he makes the accusation that the Bureau "deceitfully remains silent"; and he states that he "has doubts" about the Presiding Judge's "moral qualifications to judge any character issue" in this case. *Motion*, at 2–3, 5. Pleadings that do not have a "good ground to support it" or that are "interposed for delay" fall within the prohibition against abuse of process as are prohibited pleadings under Section 1.52 of the Commission Rules. 47 C.F.R. § 1.52 (2009). And an attorney's signature on such pleadings could be grounds for "disciplinary action, pursuant to § 1.24, [for willful] violation . . . ." *Id.*

Potential Issue Enlargement

18. Mr. Crowell has argued concocted happenings as described above. In doing so, he has advanced unjustified ad hominem attacks against the Commission, Bureau Counsel and the Presiding Judge. Mr. Crowell even argues a whimsical First Amendment issue that is another waste of time. Pleadings and arguments that lack supporting grounds – and have no foundation in fact or are spurious and time wasting causing delays in the hearing process – may be an abuse of process and may be found to reflect adversely against Mr. Crowell's character.[13] An abuse of process should be considered in assessing character qualifications. The Commission has no use for "harassment of opposing parties" and by extension it would have no use for any harassment of a presiding judge or of the Commission itself. *1986 Character Statement*, 102 F.C.C. 2d at 1211. An abuse of process "will also continue to be considered as bearing on character." *Id.*

19. Commission Rule 1.229(b)(3) allows "any person . . . to file a motion to modify the issues after stated time expiration periods." 47 C.F.R. § 1.229(b)(3). A motion to modify the issues is granted if "good cause is shown.[14] *Id.* However, the Presiding Judge has the authority to modify the issues [47 C.F.R. § 1.243(k) (2009)] when a party's (or parties') antics can "'[threaten] the integrity of the Commission's

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regards to interrogatories that "[a]nswers may be used in the same manner as depositions of a party (*see* § 1.321(d))." 47 C.F.R. § 1.323(b) (2009).

[13] Section 1.243(k) authorizes the Presiding Judge to enlarge, modify or delete the hearing issues. 47 C.F.R. § 1.243(k) (2009).

[14] Motions based on "newly discovered facts" must be filed "within 15 days" after the discovery of such facts. 47 C.F.R. § 1.229(b)(3) (2009). Here, these possible abuses of process are not based on "newly discovered facts," and thus the fifteen days statute of limitations does not apply. *Id.*

licensing processes . . . .'" *David Ortiz Radio Corp. v F.C.C.*, 941 F.2d 1253, 1261 (D.C. 1991).[15] Here, Mr. Crowell's possible abuses of process merit serious consideration of a modification of issues.[16]

ENFORCEMENT BUREAU'S LATE ANSWERS TO INTERROGATORIES

20. The Bureau answered Interrogatory 76(a) and (c) and Interrogatory 113 in its *Enforcement Bureau's Supplemental Responses to Applicant's First Interrogatories* ("Bureau's Supplemental Motion"), filed May 17, 2010. In its Supplemental Motion, the Bureau listed the following intercepts which it intends to use at the hearing: (1) an interference by W6WBJ (Mr. Crowell's call sign) on 3943 kHz on April 22, 2006; (2) an interference by W6WBJ on 3840 and 3943 kHz on April 29, 2006; (3) an interference by W6WBJ on May 1, 2006; (4) a jamming interference by W6WBJ on January 22, 2007; (5) a jamming interference with music transmission (which included pianos, drums, conga, marimba, and Gibson L5) by W6WBJ on January 31, 2007; (6) a statement by W6WBJ on February 6, 2007; (7) a statement about another licensee by W6WBJ on February 6, 2007; (8) a jamming interference by W6WBJ on March 18, 2007; (9) a jamming interference by W6WBJ on 3767 kHz on April 16, 2007; (10) harassment of other amateur licensees by W6WBJ on June 21, 2007; and (11) an interference by W6WBJ on 3840 kHz on March 2, 2008.

21. The Bureau is cautioned that if there are any other intercepts that are discovered by the Bureau between the date of issuance of this ruling and the date for finalization of discovery, and the Bureau decides to use such later discovered intercepts at the hearing, the Bureau has an obligation to immediately disclose them to Mr. Crowell and to provide him copies of proof of any such intercepts. A failure to disclose timely may result in the rejection of such evidence at hearing.

RULINGS

22. IT IS ORDERED that the relief requested with regard to filing separate Status Reports, and an extension of time for Trial Briefs were granted and ARE MOOT.

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[15] The D.C. Circuit held that the Review Board erred when it dismissed the petitioner's abuse of process motion. *Ortiz*, 941 F.2d at 1261. The Court explained that although a conviction is required in adversely assessing non-FCC related misconduct, the *1986 Character Statement* also permits the modification of issues when such misconduct "threatens the integrity of the Commission's licensing processes," and thus continues "to be considered as bearing on character." *Id.* (citing *1986 Character Statement*, 102 F.C.C. 2d at 1211).

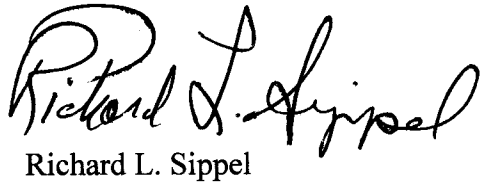
[16] Mr. Crowell's actions meriting a modification of the issues are similar to that *In re Alexander Broadcasting Co.* [13 F.C.C. Rcd. 10355 (1998)],wherein the Mass Media Bureau dismissed petitioner's motion for reconsideration due to their abusive nature and outrageous allegations regarding a non-existent influence by the Reagan Administration and the Administrative Law Judge assigned to this case. *Id.* "[A]busive pleadings . . . such as those . . . that are directed primarily at causing delay or harm . . . for [one's] own private interests." *Nationwide Communications*, 13 F.C.C. Rcd. 5654, 5657 (1998). Such actions are not tolerated and are deemed abuses of process. *See Radio Carrollton v. Faulkner Radio*, 69 F.C.C. 2d 1139, 1152–1155 ¶¶ 29–33 (1978).

23. IT IS FURTHER ORDERED that spurious and groundless arguments used by William F. Crowell and/or insulting ad hominem characterizations directed against the Enforcement Bureau, Enforcement Bureau Counsel and/or the Presiding Judge may be considered for inclusion in one or more added issues alleging abuses of process.

24. IT IS FURTHER ORDERED that William F. Crowell SHALL SHOW CAUSE as to why there should be no abuse of process issues added.

25. IT IS FURTHER ORDERED that William F. Crowell shall file his Show Cause pleading by **September 3, 2010**. The Bureau shall file its Opposition by **September 16, 2010**. William F. Crowell shall file his Reply by **September 29, 2010**.

FEDERAL COMMUNICATIONS COMMISSION[17]



Richard L. Sippel
Chief Administrative Law Judge

[17] Courtesy copies of this *Order* e-mailed to Mr. Crowell and counsel for Enforcement Bureau on date of issuance.