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William F. Crowell

1110 Pleasant Valley Road
Diamond Springs, California 95619

April 3, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
445 – 12th Street S.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Application of William F. Crowell to renew Amateur Service license W6WBJ
WT Docket No. 08-20; FCC file no. 0002928684

Dear Secretary Dortch:

I am the applicant-licensee in the above-entitled case.

Enclosed you will please find the original and six (6) copies of my Appeal to the Commission pursuant to Commission Rules 1.245 and 1.301 therein.

Please file and docket this document and direct it to ALJ Sippel and to the Commissioners in the manner that you deem appropriate. I have filed it with the ECFS. Thank you for your cooperation.

Yours very truly,

WILLIAM F. CROWELL

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encls.

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

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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	)	

To: Marlene H. Dortch, Secretary
Federal Communications Commission

Attn: Richard L. Sippel
Administrative Law Judge

LICENSEE'S APPEAL TO THE COMMISSION FROM ALJ's DENIAL OF MOTION TO DISQUALIFY HIM PURSUANT TO 47 C.F.R., Chapter I, Subchapter A, Part 1, Subpart B, §1.245 [47 C.F.R., Chapter I, Subchapter A, Part 1, Subpart B, §1.301]

Submitted by:
William F. Crowell, Licensee
Amateur Radio Station W6WBJ

William F. Crowell
Amateur Radio Station W6WBJ
1110 Pleasant Valley Rd.
Diamond Springs, Calif. 95619
email: retroguybilly@gmail.com
April 1, 2017

Rule 1.245 of the Commission's Rules of Practice and Procedure provides for a motion to disqualify an ALJ due to bias or prejudice against a party. I filed such a motion herein on October 7, 2010, but ALJ Sippel failed to rule on it until March 28, 2017 (6-1/2 years later). Rule 1.301 of the Commission's Rules provides for an appeal of the ALJ's denial of such a motion as a matter of right, even though it is an interlocutory ruling. The appeal must be filed within 5 days and is limited to 5 pages in length.

I have been an amateur radio operator since 1960, when I was 13 years old. I am an old-fashioned ham operator who is proficient at high-speed CW (Morse code) and has a clean signal. I never had any problem with the Commission until the year 2000, when I had a spirited discussion with another ham on the 75-meter amateur band. Later I received a warning letter from Riley Hollingsworth, former "Special Counsel" for amateur radio enforcement at the Enforcement Bureau, concerning that discussion. I then learned that the other station had complained to Hollingsworth, accusing me of "jamming" him merely because he had ordered me to leave the frequency because he didn't want to talk to me. However, since I am not required to comply with such a request[1], I had declined to do so.

Without even speaking to me, or hearing my side of the story first, Hollingsworth wrote said letter in which, together with the related telephone conversations in response thereto, he claimed the legal authority to, and attempted to, illegally modify my operating privileges under my license grant, thereby denying me due process as guaranteed by Sec. 97.27 of Part 97[2] and by Section 9 of the Administrative Procedure Act[3] ("APA"). When I objected to Hollingsworth that "you can't do this" under Part 97, §97.27 and the APA, his response was "just watch me!".

Hollingsworth was traveling all around the country at taxpayer expense at the time, speaking to any ham radio group that would listen to him, in the stupid and misguided belief that he was doing public relations work for the Bureau and for the Commission when he told the amateurs assembled that his boss Richard Lee was a Big Tough Guy who had told him to "ignore the legalities" when running the so-called "jammers" off the air.

This case has been pending ever since 2000, and clearly goes well beyond the "gray area" of enforcement actions which even former, highly-partisan, E.B. Chief Leblanc admitted the

1 Title 47 CFR, Part 97, §97.101(b) requires all amateurs to always share all their frequencies, all the time (no exceptions), and that no amateur has an exclusive use of any frequency.

2 47 CFR Part 97, §97.27(b) provides the amateur with the right to notice and appeal (ALJ hearing) in license modifications.

3 5 USC Subchapter II, §554

Bureau prosecutes[4], and which Chairman Pai has so perceptively referred to in a recent speech[5]:

> "Last month, I told the Subcommittee on Communications and Technology of the House Energy and Commerce Committee that the FCC's enforcement process had gone off the rails. First, instead of applying the law to the facts, the Commission's enforcement process has shifted to issuing headline-grabbing fines regardless of the law. Second, the FCC's current enforcement process sets the wrong priorities and is less productive than it used to be. With visions of New York Times headlines dancing in its head, the FCC currently has little interest in doing bread-and-butter enforcement work. This is powerful evidence of the FCC's misguided enforcement priorities. Instead of going after companies for conduct that Americans actually complain about and that could actually violate our rules, we're chasing press. Instead of setting the table with meat and potatoes, we're foraging for truffles."

This entire case is a "truffle" based on an illegal premise: that I have to leave the frequency if anybody objects to talking to me. It was not until 2008 that a hearing designation order issued herein, and the Bureau pursued no further action in the case after they took my deposition in 2010. Now, after 18 years of delay since the initial warning letter, the ALJ proposes to re-activate the case and set a hearing date. I can't defend myself against things that happened 18 years ago. There is no reason why the Bureau could not have taken the case to a hearing years and years ago, had it really desired to do so. In my opinion, the Bureau knows it has a weak case and does not wish to proceed to hearing.

The E.B. maintains a so-called "complaint-driven" enforcement regime which is unconstitutional as applied because it fails to protect, and in fact punishes, the minority opinion.

When I try to comply with my duty of candor under Rule 1.17, the ALJ becomes very angry and yells at me during conference hearings, insisting that I withdraw or refrain from raising the issues he does not wish to hear (but then he writes a conference summary which omits the issues he didn't want me to raise, claims I didn't raise them, and makes himself sound like a model of reasonableness and probity). The ALJ has constructed a tilted playing field where the Bureau and the ALJ are free to falsely disparage, defame and deprecate me, but when I try to defend myself from said false charges the ALJ accuses me of contempt. He tries to bully me by "whipsawing" me between the Commission's requirement of full candor[6] vs. threats of contempt (abuse of process) if I *am* candid. He willfully and deliberately distorts my arguments. He deliberately mis-states and mis-applies the law because he does not like me. And he pretends that I did not raise issues he does not wish to hear, deliberately omitting same from his case summary

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4 http://www.theatlantic.com/politics/archive/2015/04/the-fccs-365-million-man/456489/

5 Remarks of then Commissioner, now Chairman, Ajit Pai at the PLI/FCBA 33rd Annual Institute on Telecommunications Policy and Regulation, Washington, D.C., December 3, 2015.

6 47 CFR, Chapter I, Subchapter A, Part 1, Subpart A, §1.17

orders and from the record in this case, so as to make it appear that I did not raise the issues.

Figuratively speaking, the ALJ lets the Commission's attorneys write his opinions for him. He always accepts the Commission's attorneys' interpretation of its rules, even when their interpretation clearly violates the "plain meaning" rule of statutory construction and interpretation. This has gotten even worse since the Commission overruled and reversed the ALJ's Initial Opinion in Titus (KB7ILD)[7]. The ALJ does not seem to desire to learn the law that applies to the amateur radio service, and instead prefers to delude himself into thinking that amateur radio law is just a trivial variant of broadcast radio law. It is not, and he gets very angry at me when I point it out.

The ALJ won't apply the Supreme Court's holdings concerning indecent language in FCC v. Red Lion[8] and Sable Communications of California, Inc. v. FCC, which apply a fortiori to the amateur radio service, merely because they involved different classes of licensees, a "distinction without a difference", as Professor Prosser used to say. He instead follows the Hildebrand (N6BHU) case[9], in which (although the former Review Board correctly found that Red Lion and Sable prevent the Commission from prohibiting indecency in the amateur service[10]), the Bureau appealed the case to the Commission and got the decision reversed on a highly-questionable rationale, based entirely upon the unsupported and incorrect legal analysis of the Commission's attorneys, that failed entirely to acknowledge or discuss Red Lion or Sable. Then the Bureau essentially bribed and coerced Hildebrand not to appeal the case to the D.C. Circuit (which would certainly have reversed the Commission) by offering to restore his license with no time off the air if he would agree not to appeal. This entire misuse and abuse of the Commission's judicial process, resulting in the establishment of incorrect "law", is highly prejudical to me.

The ALJ got really mad and yelled at me during a conference hearing because I exposed how the Commission was violating its own rule[11] that documents are deemed filed upon receipt by sending its mail to an outlying facility for irradiation before opening it. He refused my request to brief the issue in order to prove that some of my motions had been denied due to supposed late filing (because they were sent out for irradiation before they were filed) when they were really timely filed, and then he wrote a conference summary which failed to state that I raised the issue.

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7 E.B. Docket no.07-17; FCC 14-177, November 6, 2014.
8 Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).
9 PR docket No. 81-302; FCC 87-142; 2 FCC Rcd. Vol. 9, p. 2708.
10 PR Docket no. 81-302, 92 FCC 2d 1241.
11 47 CFR Chapter I, Subchapter A, Part 1, subpart A, §1.17.

When I argue there is no factual predicate for the application of the Character Rule, the ALJ tries to liken me to a child molester (Titus [12]) or computer network hacker (Mitnick[13]). He thinks it is funny to taunt me by claiming that I want to be included in that group of convicted felons when he knows I do not want to be and do not deserve to be. I have been entirely law-abiding for my entire life, and I've never been charged with any crime, whether felony or misdemeanor. I really think the ALJ must be crazy because he ruled that the convicted child molester[14] and the convicted computer network hacker[15] have good character, while he is accusing me of having bad character merely because I am standing up for my rights. And when I correctly argued that the Commission's Character Rule, by its plain terms, applies only to broadcasters, the ALJ showed his bias against me by instead accepting the Commission's attorneys' flawed argument that the Character Rule means *just the opposite* of what it says on its face.

In short, the ALJ is very upset with me because he is accustomed to dealing with licensees who fear revocation or non-renewal because they stand to make a lot of money by retaining their licenses. That kind of a licensee will disingenuously tell the ALJ how smart he is, what a nice guy he is, and how wonderful the Commission is. However, no money is involved in the renewal of my amateur license; I take seriously my duty of candor and full disclosure under Rule 1.17; and I will never let the Commission limit my free-speech rights. If the Commission had not wanted me to expose their abuse of the enforcement process, it never should have imposed the duty of full candor and disclosure upon me by promulgating said Rule. Yet the ALJ is *punishing* me for *complying* with that rule! Accordingly, the ALJ is required under Rule of Practice and Procedure §1.245 to recuse himself herein.

WHEREFORE, Applicant prays that the Commission disqualify Robert L. Sippel from serving as the Presiding Officer (Administrative Law Judge) herein under Commission Rule of Practice and Procedure 1.245. I declare under penalty of perjury that the foregoing is true and correct, and that this Appeal is executed on April 1, 2017 at Diamond Springs, California.

William F. Crowell, Applicant

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12 David L. Titus, E.B. Docket No. 07-13, Initial Decision released March 9, 2010.

13 Kevin David Mitnick, WT Docket No. 01-344, Initial Decision released December 23, 2002.

14 But the Commission reversed him. See footnote 7.

15 Mitnick's license was renewed.

PROOF OF SERVICE BY MAIL [47 C.F.R. Part I, Subpart A, §1.47]

I am a citizen of the United States and a resident of El Dorado County, California. I am the Applicant-licensee herein. I am over the age of 18 years. My address is: 1110 Pleasant Valley Road, Diamond Springs, California 95619-9221.

On April 3, 2017 I served the foregoing Appeal to Federal Communications Commission on all interested parties herein by placing true copies thereof, each enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Diamond Springs, California, addressed as follows:

Marlene S. Dortch, Secretary, Federal Communications Commission
Attention: ALJ Sippel
445 – 12th Street S.W., Washington, D.C. 20554
(original and 6 copies)

Pamela S. Kane, Special Counsel

Investigations & Hearings Division, Enforcement Bureau

Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554

I further declare that, on this same date, I emailed a copy of this document to the ALJ and to Bureau Counsel, and that I filed this document under the Commission's Electronic Comment Filing System.

I declare under penalty of perjury that the foregoing is true and correct, and that this proof of service was executed on April 3, 2017 at Diamond Springs, California.

William F. Crowell