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

In re Application of	)	WT Docket No. 08-20
	)	
WILLIAM F. CROWELL	)	FCC File No. 0002928684
	)	
	)	
For Renewal of Amateur Radio Advanced Class Operator License	)	

DOCKET FILE COPY ORIGINAL

To: Marlene H. Dortch, Secretary
Federal Communications Commission

Attn: Robert L. Sippel,
Administrative Law Judge

LICENSEE'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION
[Title 47 CFR, Chapter I, Subchapter A, Part 1, Subpart B, Sec. 1.351 and Federal Rule of Civil Procedure 12(b)(1)]

Section 1.351 of the Commission's Rules of Practice and Procedure provides that, except as otherwise provided by Subpart B thereof, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the U.S. shall apply to ALJ proceedings. I do not believe that Subpart B contains any provision concerning dismissal of an FCC OALJ proceeding for lack of subject matter jurisdiction, so Federal Rule of Civil Procedure 12 must instead govern

such a request. Rule 12(b)(1) provides that the issue may be raised by motion, and Rule 12(h)(3) provides that subject matter jurisdiction can neither be waived, conferred upon a court by the parties' stipulation, nor established by a party's prior general appearance[1]:

> (3) *Lack of Subject-Matter Jurisdiction.* If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

The Commission and the OALJ have no legal authority to adjudicate this case under the U.S. Constitution because:

1. The Commission impermissbly mixes and exercises the legislative, enforcement, adjudicatory and punishment powers and functions of the federal government in a manner prohibited by the Article One, Section 1 of the U.S. Constitution, the separation of powers clause. Congress unnconstitutionally established the Commission based upon a discredited European socialist model of mixed-power governmental agencies which enjoyed popularity at the turn of the 20th century; however, such mixed-power agencies have no place in the American system of government because they evade the checks and balances intended by our founding fathers, and represent nothing but class-based attempts to create an administrative "aristocracy" of "the better sort of persons" who, by the subsequent abuse of their supposedly-delegated powers, then proceed to illegally and unconstitutionally aggrandize more and more power. At that point the illegal, renegade agency issues arbitrary and capricious edicts in order to, for example, prevent "the ignorant from ruling the enlightened" and "the vulgar from ruling the refined" in a completely undemocratic ripoff of our constitutional right to have a separation of powers in our federal government.[2]

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1 Subject matter jurisdiction can even be raised by motion after a general appearance. FRCP 12(b)(1).

2 Phillip Hamburger, Friedman Professor of Law at Columbia Law School, in Is Administrative Law Unlawful?, University of Chicago Press (2014) at p. 371.

2. The Commission is operating under an unconstitutional and phony delegation of authority[3] from Congress. The *real* delegation of authority was that contained in the Constitution, and it was a delegation from the *American people* to *Congress*. *That* delegation, (the one from the people to Congress), was *non-delegable, personal* and *non-assignable* in nature. In our system of federal government, the *nondelegation doctrine* is the cardinal constitutional principle that Congress, being vested with "all legislative powers" by Article One, Section 1 of the Constitution, cannot delegate that power to anyone else.

However, the Supreme Court carved out an exception to the nondelegation doctrine when it ruled in J. W. Hampton, Jr. & Co. v. United States (1928)[4] that congressional delegation of legislative authority is an implied power of Congress that is constitutional *so long as* Congress provides an "intelligible principle" to guide the executive branch agency:

> "In determining what Congress may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the government co-ordination.' So long as Congress 'shall lay down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform, such legislative action is not a forbidden delegation of legislative power."[5]

In my opinion, the J.W. Hampton case would be not upheld by today's Supreme Court because that Court has come to understand the kinds of problems such purported delegations can cause[6]. For example, if Chevron deferral is eliminated by our Supreme Court (as many expect it will be), the Supreme Court's holding will be based squarely on the unconsitutionality and invalidity of the

3 The purported but unconstitutional delegation appears at §5(c) of the Communications Act [47 USC §155(c)] and is fleshed out in 47 CFR, Chapter I, Subchapter A, Part (Commission Organization), Subpart B.

4 276 U.S. 394

5 J.W. Hampton, Jr. & Co. v. U.S., supra, at p. 404.

6 https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/03/25/gorsuch-is-right-about-chevron-deference/?utm_term=.2e0c6b759264

purported Congressional delegation of authority to the Commission. (And when even the liberal Washington Post agrees with conservatives that Chevron deferral should be eliminated, it must be an idea whose time has come. No one except the agency bureaucrats favors the continued existence of the doctrine.)

However, even if a majority of the present Supreme Court should affirm J.W. Hampton, there is the additional problem that Congress has not given the Commission an intelligble principle to guide the agency. The Commission has become a renegade, out-of-control governmental entity that cares about nothing except constantly aggrandizing additional illegal and unconstitutional powers over U.S. citizens, and Congress has completely lost control over it. The proof of this fact is that the House Committee on Communications and Technology (the committee having the duty to oversee the Commission) cannot control anything the Commission does. The Commission acts completely independently of Congress, doesn't do what Congress asks it to do, and won't answer questions about its failure to carry out Congressional directives and its mission.[7] And rather than serving the public interest, the Commission's activities (especially in the case of the former Obama administration) reflect only the raw political power of the party in the White House at the time and the selfish beaurucratic needs of agency personnel.

On July 7, 2016, Senator John Thune of South Dakota, Chairman of the Senate Committee on Commerce, Science, and Transportation, addressed the Senate concerning leadership failures at the Federal Communications Commission:

> "In recent years, the FCC has behaved less as an independent commission accountable to Congress, and more as a de facto arm of the executive branch, wholly subservient to the President."

Thune also said the FCC under Chairman Wheeler was "characterized by a lack of bipartisan compromise or respect for the limits of the authority delegated

7 At about 53:00 into the following video, watch as Congressman Walden is completely unable to obtain any answer from former Commissioner, now Chairman, Pai as to why the Commission simply ignores Congressional requests: https://www.youtube.com/watch?v=QUzh_aH4jME&index=26&list=PLQovE0unizCBNF_U2LGoL1NYAkYF_G7X6

by Congress." [8] Congress has clearly lost control over the Commission, and it is therefore impossible for Congress to give it any "intelligible principle" guidance under any circumstances, because the Commission is simply unaccountable to Congress.

Last, Congress had no power to delegate to the Commission in the first instance; i.e., the Commission's claimed delegation was an illegal, unauthorized *sub-delegation*, to which the American people never consented when they ratified the Constitution. And not only is the Commission operating under an unconstitutional delegation of authority, but [by its admitted[9] and, I would argue, arbitrary and capricious failure and refusal to enforce §97.101(b) of Part 97[10] by admittedly allowing stations the Bureau *likes* to run stations they *don't like* off the frequency rather than enforcing the sharing requirement of §97.101(b)] the Enforcement Bureau is also illegally attempting to unconstitutionally *sub-sub-delegate* the authority for enforcement of the amateur rules to private individuals.

Wherefore I request that this proceeding be dismissed with prejudice due to the Commission's lack of subject matter jurisdiction over me. I declare under penalty of perjury that the foregoing is true and correct, and that this Motion is signed on April 7, 2017 at Diamond Springs, El Dorado County, California.

Respectfully submitted,

William F. Crowell
Applicant-licensee

8 https://www.commerce.senate.gov/public/index.cfm/speeches?ID=326DE301-FF24-469E-BE21-1C3ABF9BCCA9

9 See Page 6 of the August 2, 2016 Forfeiture Order issued against me in my NAL/FO case (NAL/Acct. No.: 201632960001), in which Charles Cooper writes for the Enforcement Bureau that the Bureau has no obligation whatsoever to enforce §97.101(b); may pick and choose which of its Rules it wishes to apply and enforce; and may sub-delegate its responsibility for applying and enforcing §97.101(b) to private individuals; i.e., amateurs that the Bureau happens to like, and that such amateurs may run off the frequency anyone they don't like.

10 47 CFR, Part 97, §97.101(b).

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 7, 2017 I served the foregoing Motion To Dismiss for Lack of Subject-Matter Jurisdiction on all interested parties herein by placing true copies thereof, each enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box at Diamond Springs, California, addressed as follows:

Office of the 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 7, 2017 at Diamond Springs, California.

William F. Crowell

William F. Crowell