

ORIGINAL
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FILE ✓

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Revocation of License of)
)
SANDRA V. CRANE)
Amateur Radio Station N6TFO)
Marina Del Ray, California)
)
and)
)
Suspension of License of)
)
SANDRA V. CRANE)
Amateur Extra Class)
Radio Operator License)
)
and)
)
Revocation of License of)
)
CHARLES P. PASCAL)
Amateur Radio Station WB6CIY)
Carson City, Nevada)
)
and)
)
Suspension of License of)
)
CHARLES P. PASCAL)
Amateur Extra Class)
Radio Operator License)

PR Docket No. 92-119

RECEIVED

JUL 31 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Hon. Joseph Stirmer
Chief Administrative Law Judge

JOINT MOTION TO SCHEDULE FIELD HEARING OR FOR CHANGE OF VENUE

Charles P. Pascal and Sandra V. Crane, by their counsel and pursuant to Commission Rule Section 1.253 move the Chief Administrative Law Judge either to schedule a field hearing in this proceeding in the Los Angeles, California area or to change the venue of the hearing scheduled in this matter to Los Angeles, California. In support, the following is shown:

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List A B C D E

1. On June 10, 1992, the Chief Administrative Law Judge issued an order setting the hearing for this proceeding on September 29, 1992 at the Commission's offices in Washington. See Order, FCC 92M-656 (June 10, 1992). As we show below, however, justice will best be solved by scheduling a field hearing in the Los Angeles area or by changing the venue of this proceeding to Los Angeles.

2. This proceeding looks to a determination of whether the respondents, Mr. Pascal and Ms. Crane possess the requisite qualifications to be Commission licenses in the Amateur Radio Service. While in the scheme of the Commission's regulation radio communications, this may be a minor proceeding, the question whether the licensees may continue to participate in amateur radio is to them of major significance. They thus deserve a fair hearing, with the real ability to produce evidence showing they are not guilty of the charges the Bureau has lodged against them.

3. As a revocation proceeding, involving character issues, evaluation of witness credibility is important. That evaluation must of necessity involve not only the respondents whose licenses are on the line, but also the testimony of the adverse witnesses the Bureau intends to produce.

4. The Bureau's chief witness appears to be Ms. Christine McElwain. See Bureau Outline of Evidence and List of Witnesses (June 15, 1992). She was specifically recruited to attend the respondents' amateur radio classes and the testing sessions

following those exams under cover. An evaluation of her reliability and her credibility is essential to a proper evaluation of the evidence. We do not suggest at this time that her service in this regard was motivated by anything less than a public spirited concern for the cause of amateur radio. However, we believe that a recruited undercover investigator who has little or no knowledge of investigative techniques and no experience in this sensitive area has a strong psychological need to validate her actions, which often involve deceit toward the targets of her investigation. Under these circumstances we believe it likely that her perceptions of the events in question could have been colored by what she expected to see. Given this possibility, fairness requires that the respondents have the opportunity to present extensive testimony from other persons who witnessed the events to which Ms. McElwain will testify. Conduct of hearing sessions in Los Angeles are essential to presenting this testimony.

5. These events all occurred in the Los Angeles area. Indeed every class and test session at issue in this proceeding occurred in the Los Angeles area. And, to the best of respondents' knowledge all of the persons involved in those testing sessions are resident of the greater Los Angeles area.

6. In fact, the Bureau's June 15, 1992 outline of witnesses and evidence indicated that the Bureau intended to call three Los Angeles, CA, area residents: Ms. McElwain; Tracy Gullotti; and Ms. Crane, one of the movants. In addition, the

Bureau intends to seek live testimony from Mr. Pascal, also one of the respondents. His residence address is currently in Carson City, Nevada, which is a relatively short distance from Los Angeles. Moreover, at page seven of the Bureau's filing, it noted that if the location of the hearing is changed, a revised list of witnesses and outline of evidence would be filed. That passage clearly indicated that there are additional witnesses the Bureau would call in the event of a Los Angeles hearing.^{1/}

7. On June 29, 1992, the respondents filed their outline of evidence and witness list. That outline listed 16 proposed witnesses who reside in the Los Angeles area. In addition, it was noted that because the Bureau had not then responded to a request filed under the Freedom of Information Act, 5 U.S.C. 552(b), the only means of obtaining documentary evidence from the Commission's files, that the respondents reserved the right to supplement their witness list. See Respondents Outline of Evidence and Witness List (June 29, 1992).

8. The Bureau has recently responded to the FOIA request. The documents obtained in that request indicate that at least 34 individuals who were either applicants or volunteer examiners at the tests conducted on August 4, 1991, August 24, 1991 and September 14, 1991, have submitted written statements to the Commission. Each one of those individuals, almost all of whom are licensees of this Commission, have represented to this

^{1/} Undersigned counsel had previously informed Bureau counsel that he might request a field hearing in the Los Angeles area.

agency that the tests in questions were fairly and appropriately administered, and that no untoward conduct occurred on the part of respondents. Each of these individuals are eye witnesses to the circumstances which the Bureau apparently believes constituted misconduct on the respondents' part. And each of these witnesses offers testimony at odds with the Bureau's undercover witness.

9. Although the Bureau, of course, bears the burdens of presentation and proof in this proceeding, the testimony of a considerable number of these eye witnesses will be necessary to establish that the respondents' licenses should not be revoked.^{2/}

10. Each of these individuals who have already told the Private Radio Bureau that no rules were violated in the testing sessions at issue by Ms. Crane and Mr. Pascal lives in the Los Angeles area. Charles P. Pascal and Sandra Crane are individuals of modest means. Mr. Pascal is visually handicapped and is currently unemployed. He has virtually no assets save his amateur

^{2/} It will be necessary for the presiding officer to weigh the testimony of a prepped undercover "investigator" against persons who attended the amateur classes in good faith or who were volunteer examiners for those classes. In such a circumstance witnesses who will testify that no rule violations occurred at the testing sessions in question, could be said to have a personal interest affecting their testimony. Thus, we do not believe that evidence from more than a few witnesses exonerating Ms. Crane and Mr. Pascal can be considered cumulative. Where the testimony of several witnesses consistently supports one version of the facts and contradicts an alternative version of the facts testified to by only one witness, this in and of itself offers strong support that the events as testified to by the bulk of the witnesses is what actually happened, and that the lone dissenting witness is for some reason incorrect in her testimony.

radio equipment and his household furniture. Ms. Crane is also unemployed. She has had to begin to liquidate what assets she has to pay her living expenses and the expenses of this litigation. There is no way these two individuals can transport these witnesses or even a few of them to Washington for the scheduled hearing. Quite frankly, the cost of employing legal counsel itself is already a hardship on both Mr. Pascal and Ms. Crane. They would barely have the financial wherewithal to fly themselves to Washington and pay their expenses to testify at the hearing, much less transport a large group of witnesses.

11. Even if they did, although compulsory process is available to them with respect to these witnesses, it would be unfair to those witnesses to require them to spend two days in travel across the country to give one or two hours of testimony each. These witnesses would lose substantial time from their employment, and would likely resist service to avoid such an inconvenience.

12. Hence, unless the Chief Administrative Law Judge either changes the venue of this proceeding to Los Angeles or schedules a field hearing in the Los Angeles area, respondents will be unable to present their case. This will result in the denial of due process guaranteed by Section 309 of the Act and the provisions of the Administrative Procedures Act.

13. In Rocket Radio, Inc., 36 Rad. Reg. 2d (P&F) 81 (1976), the Commission reversed the then Chief Administrative Law Judge's denial of a request for a change of venue of a

comparative hearing from Washington to a field location. In so doing, the Commission effectively waived Section 1.115's prohibition against appeal of interlocutory rulings of an ALJ's, finding that the issue presented was one which was "fundamental" to the outcome of the case. Id. at 82. The applicant in seeking the change of venue made a showing that its finances were limited and that it could not financially bear the cost of transporting 12 to 15 witnesses to Washington. The Commission was convinced that since serious character issues were being litigated, which required that the ALJ have the opportunity to make demeanor and credibility findings, and that the public interest would therefore best be served by ensuring the opportunity for a full and complete hearing.

14. Rocket Radio is clearly on all fours with this case. This is a character proceeding where credibility and demeanor findings will be necessary to determine whether the respondents are qualified to hold their licenses. A large number of witnesses both for the Bureau and for the respondents are located in Los Angeles. It would at the very least be a financial hardship on the respondents to bring those witnesses to Washington. Indeed it is a practical impossibility. And it would be an unfair hardship on the witnesses themselves to bring them here. Lastly, other cases support the holding a field

hearings in this case. See Cathryn C. Murphy, 23 F.C.C.2d 204 (1970); Norman W. Hemmig, 7 F.C.C.2d 968 (1967).^{3/}

15. Lastly, as noted above, Mr. Pascal is virtually blind. The recently passed Americans with Disabilities Act expresses the public policy of the United States that both the private sector as well as government agencies must make reasonable accommodations to facilitate access to themselves by disabled persons. Forcing Mr. Pascal, a visually disabled individual, to come to a city with which he is not familiar and where he has no one available who can assist him, in order to save his amateur radio license clearly runs afoul of the spirit, if not the letter, of the Act.

16. Respondents fully understand and appreciate the Commission's desire to minimize the expense of its operations in this era of limited budgets. However, that goal, cannot, consistent with the requirements of due process and a statutory right to a full hearing, serve to deny respondents the ability to make their case. Denial of this motion will in fact result in a

^{3/} See also Brown Radio and Television Company, 4 Rad. Reg. 2d (P&F) 695 (Chief Hearing Examiner 1964); Prattville Broadcasting Co., 4 Rad. Reg. 2d (P&F) 237 (Chief Hearing Examiner 1964); LaFiesta Broadcasting Corp., 2 Rad. Reg. 2d (P&F) 15 (1964); Vadalia Broadcasting Co., 7 Rad Reg. 698 (1951).

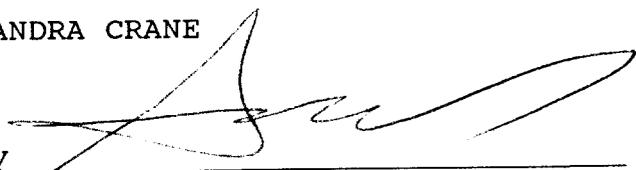
denial of respondents ability to present their case. That would clearly disserve the ends of justice.^{4/}

Respectfully submitted,

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July 31, 1992

^{4/} Although Bureau counsel has been notified that this motion would be filed, Bureau counsel has not indicated the Bureau would support grant of this motion. The Bureau is, of course, free to take any position it deems prudent, respondents trust the Bureau will not base its position with respect to this motion on the tactical advantage it might achieve by frustrating respondents' access to witnesses.

CERTIFICATE OF SERVICE

I, Lydia N. Hicks, Secretary, at the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, certify that true copies of the foregoing document were sent this 31st day of July 1992, via first class mail, postage prepaid to the following:

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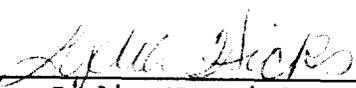
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