

ORIGINAL FILE RECEIVED 'AUG 6 - 1992

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

FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

In the Matter of)
Revocation of License of)
SANDRA V. CRANE)
Amateur Radio Station)
N6TFO)
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)
WB6CTY)
and)
Suspension of License of)
CHARLES P. PASCAL)
Amateur Extra Class)
Radio Operator License)

PR Docket No. 92-119

To: Chief Administrative Law Judge Joseph Stirmer

OPPOSITION TO RESPONDENTS' MOTION TO CHANGE LOCATION OF HEARING

The Chief, Private Radio Bureau, by his attorneys, respectfully requests that the Chief Administrative Law Judge deny the respondents' "Joint Motion to Schedule Field Hearing or for Change of Venue."

- 1. On July 31, 1992, respondents Charles P. Pascal and Sandra V. Crane,

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by their counsel, moved, pursuant to Section 1.253 of the Commission's Rules, 47 C.F.R. § 1.253, to change the location of the September 29, 1992, hearing in the captioned matter (now scheduled for Washington, D.C.) to the Los Angeles, California, area. See "Respondents' Outline of Evidence and Witness List," filed June 29, 1992.

2. The respondents assert that 16 persons listed among their proposed witnesses are residents of the Los Angeles area. They contend that they do not have the financial resources to transport these witnesses to Washington, D.C., and that, even if they did, the Los Angeles area witnesses would be unfairly inconvenienced by so having to appear in Washington, D.C.

3. The respondents' argument ignores the fact that testimony in this proceeding, except for that of adverse witnesses, is to be presented in writing. Oral testimony at the hearing is required only if cross examination is needed. The Bureau believes that, except for the respondents themselves, the respondents' proposed witnesses will be able to offer testimony that, at best, will be of only marginal significance to this proceeding. The Bureau, therefore, believes that it probably will be unnecessary to require the appearance of the respondents' proposed witnesses, except for the testimony of the respondents themselves.

4. Two of the respondents proposed witnesses -- George Sfair and Fred Ordway -- are described as adverse witnesses and, therefore, would not testify in writing. The respondents, however, have not made a showing that Mr. Sfair and Mr. Ordway are likely to provide testimony of probative value. It is proposed that Mr. Sfair will be questioned about the administration of an examination to Tracy Gullotti on January 6, 1991. Respondent Crane has already admitted that Tracy Gullotti is her daughter and that, on January 6, 1991, she

administered an examination to Ms. Gullotti. See "Response to Request for Admissions of Sandra Crane," filed July 9, 1992. The administration of that examination constituted a violation of Section 97.515(d) of the Commission's Rules, 47 C.F.R. § 97.515(d). The respondents have not shown that Mr. Sfair could add anything of significance to this issue. It is further proposed that Mr. Ordway be called to testify about "the general acceptability in the amateur community of the methods used by Mr. Pascal to teach classes to students in preparation to take amateur radio examinations." The "general acceptability" of Mr. Pascal's teaching methods is not at issue in this proceeding and has no apparent relevance. In summation, the respondents have not shown that Mr. Sfair and Mr. Ordway would be able to provide testimony of probative significance. Therefore, their residence in the Los Angeles area does not support changing the location of the hearing.

5. The respondents contend that holding the hearing in Washington, D.C., would run afoul of "the spirit, if not the letter," of the Americans with Disabilities Act of 1990¹ because of Mr. Pascal's visual disability. The respondents cite no provision of the Act and no precedent to support this proposition. Travel is not necessarily an undue hardship for the visually disabled. On the contrary, many persons who are visually disabled do travel. The respondents have not demonstrated that travelling to Washington, D.C., would constitute an undue or unusual hardship for Mr. Pascal.

6. The respondents have not demonstrated an adequate basis for changing the location of the hearing. As indicated above, the Bureau anticipates that live testimony will be required from only two of the respondents' witnesses, these

¹ Pub.L. No. 101-336, 104 Stat. 327 (1990).

being the respondents themselves. If the hearing is held in Washington, D.C., the only witness expected to travel from the Los Angeles area would be Sandra V. Crane. Charles P. Pascal would be required to travel a greater distance if the hearing is held in Washington, D.C., rather than in the Los Angeles area. Christine McElwain, the Bureau's principal witnesses, resides in the Los Angeles area but will be in Raleigh, North Carolina, at the time of the hearing and would be required to travel only a short distance. If live testimony is needed from Bureau witnesses Frederick O. Maia (who resides in the Dallas - Fort Worth area) and James Georgias (who resides in the Chicago area), they will both be required to travel a longer distance if the hearing is held in the Los Angeles area rather than in Washington, D.C. If live testimony is required from Bureau witness John B. Johnston (who resides in the Washington, D.C. area), it would be necessary for him to travel a significant distance only if the hearing were held in the Los Angeles area. In the event of a Los Angeles area hearing, it would be possible for the Bureau to use an alternative witness residing in that area to replace Bureau witness Walter Ramsey, who resides in the Washington, D.C. area.

7. Of course, a Los Angeles hearing would require Bureau counsel and the presiding Administrative Law Judge to travel to the Los Angeles area. When this travel is considered along with the expected travel by the respondents and other witnesses, it is clear that holding the hearing in Washington, D.C., would actually minimize travel. The respondents have acknowledged that they have sufficient financial resources to transport themselves to Washington, D.C. and they have not shown that their appearance in Washington, D.C. would be

an undue hardship.²

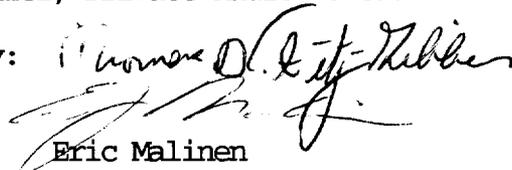
8. If, contrary to expectations, the Bureau finds it necessary to cross examine a number of respondents' Los Angeles area witnesses, the Bureau will reconsider its position. It would be premature to change the location of the hearing to Los Angeles at this time, when it is not known that cross-examination will be necessary.

9. For all of the foregoing reasons, the Bureau respectfully requests that the respondents' "Joint Motion to Schedule Field Hearing or for Change of Venue" be denied.

Respectfully Submitted:

Ralph A. Haller
Chief, Private Radio Bureau

By:


Eric Malinen
Thomas D. Fitz-Gibbon
Attorneys

Dated: August 6, 1992

² Because respondents apparently would need only to transport themselves to Washington, D.C., and have the financial resources to do so, the case cited by the respondents -- Rocket Radio, 57 FCC 2d 759, 36 Rad.Reg. 2d (P&F) 79 (1976), is inapplicable. That case involved an applicant who was financially unable to transport 12-15 witnesses to Washington, D.C.

Certificate of Service

I, Ivy I. Harris, certify that on August 6, 1992, a copy of the foregoing OPPOSITION TO RESPONDENTS' MOTION TO CHANGE LOCATION OF HEARING, filed on behalf of the Chief, Private Radio Bureau, was sent by First Class mail to:

Martin J. Barab, Esq.
9606 Santa Monica Boulevard,
Third Floor
Beverly Hills, California 90210

George L. Lyon, Jr., Esq.
Lukas, McGowan, Nace & Gutierrez
1819 H Street, NW,
Seventh Floor
Washington, D.C. 20006

Joseph Stimer
Chief, Administrative Law Judge
Federal Communications Commission
2000 L Street, NW, Room 224
Washington, D.C. 20554
(Hand carried)

A handwritten signature in cursive script, reading "Ivy I. Harris". The signature is written in dark ink and is positioned at the bottom center of the page.