

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

In the Matter of)	WT Docket No. 08-20
)	
WILLIAM F. CROWELL)	FCC File No. 0002928684
)	
Application to Renew License for Amateur)	
Service Station W6WBJ)	

To: Marlene H. Dortch, Secretary
Federal Communications Commission

Attn: Richard L. Sippel,
Administrative Law Judge

APPLICANT'S STATUS REPORT

Pursuant to the Presiding Judge's Order, FCC 18M-03 (released May 31, 2018), Applicant WILLIAM F. CROWELL hereby submits this report to the ALJ regarding the status of discovery and readiness for trial herein.

Summary of the Filing [47 CFR Sec. 1.49(c)]

The case is not ready for trial, and can never be properly and legally tried, because all of the evidence that the Enforcement Bureau wishes to offer is barred by the First Amendment. There are also several other fatal legal infirmities to the Bureau's case. I decline to appear at a hearing in Washington, D.C. because the Commission is required to give me a field hearing, and I request attorney's fees herein under the EAJA.

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1. The case is not ready for trial because the proceedings are unconstitutional. And no, I am not a “sovereign citizen” type. The plain law of the matter is that the Commission was created by a congressional delegation of authority, and congress had only legislative powers to give to the Commission in the first instance. Congress couldn't give the Commission what Congress didn't have. Yet somehow the Commission claims to exercise the powers of all three branches of government. This clearly violates Article 1, Section 1, the Constitution's “separation of powers” doctrine, and the reason is clearly related to social class. The highly-aristocratic Pres-

idents who created today's "alphabet soup" of federal agencies admired the German form of government rather than our own; the German government utilized a great number of administrative agencies run by aristocrats who thought they were entitled to tell the "great unwashed masses" how to live and think; the aristocrats liked administrative agencies because they could always find jobs for their children and other relatives there; and the Roosevelts gave not a moment's thought to the constitutionality of those agencies when creating them. So now we have unelected bureaucrats writing the laws that bind us, a profoundly undemocratic development.

Some of today's most eminent legal academics agree with me¹, and the ones who disagree are mostly inhabitants of the swamp, so they don't count. (That was supposed to be a joke.)

By the time it ever became necessary to petition the U.S. Supreme Court for certiorari herein, the Supreme Court will have already eliminated Chevron deference and will be ready to tackle the Constitutional issues created by this violation of the Constitution's separation of powers clause, which impermissibly creates the equivalent of a British prerogative court. Our Constitution never incorporated any prerogative courts. I believe that the issue of the unconstitutionality of our "alphabet soup" of federal agencies enjoys an ineluctible intellectual appeal to the Supreme Court.

2. The Commission has breached my license agreement. The case represents merely the culmination of a vendetta harbored by Riley Hollingsworth against me. This is clearly established by the evidence, and the ALJ should therefore summarily renew my license.

In 1960, at the age of 13, I obtained my Novice amateur license. I then proceeded to learn the radio theory and the telegraphy skills necessary to pass my General class exam in 1961 before an Engineer In Charge of the Commission, including sending and receiving CW at 13 words per minute. Then in 1976 I passed the radio theory test for the Advanced class license, and the CW test pertaining to the Extra class license (sending and receiving code at 20 words per minute), again before an FCC Engineer In Charge. It was difficult for me to acquire the knowledge and to gain the skills necessary to pass my Advanced class theory and Extra class code exams, but I was willing to do it in order to obtain a license from the Commission because I

¹ Hamburger, Philip: "Is Administrative Law Unlawful?", University of Chicago Press, 2014. Even the original version of the book, which was a long, tough historical and legal read, proved so popular that the publisher engaged Prof. Hamburger to write a second, shorter, "layman's version", which has been on the best-seller lists for some time.

desired to operate an amateur radio station.

The problem is that in 2000, after I had fully performed my side of my license agreement with the U.S. Government, the Commission breached our agreement by notifying me that they were not only licensing my amateur radio station, but that they were also licensing and regulating my speech, and that if I said anything on the air or on the internet that they did not like, they would claim I had bad character and would refuse to renew my license. I never agreed to this, and I won't tolerate it.

Of course the Commission did not come right out and admit they were restricting my speech, but that is a fair reading of their attempts to call my speech “interference” or “jamming”. First, the ALJ must realize that amateur radio is all about speech, and nothing but speech. Speech is both the mother's milk and the stock in trade of amateur radio, if you will pardon a mixed metaphor.

Then it must be realized that the Commission has a long and, I would submit, rather sordid history of abusing and deliberately misinterpreting the term “interference” in order to evade its responsibilities under the Communications Act. For example, when the Commission first allocated channels on the VHF television band in the late '40s and early '50s², it allocated only one station in each geographic market and awarded all the licenses to friends of all the politicians. Then, in order to further ingratiate itself with the political establishment, the Commission illegally protected³ each such licensee's geographic market by refusing to issue any further VHF TV licenses in each market, under the pretext that to issue any more licenses would cause “interference”. Of course years ago such a decision would pass muster before the courts under the Chevron deference rationale, but such is no longer the case. Under modern jurisprudence the Commission can no longer hide behind its administrative discretion to justify violating the Act.

When Hollingsworth couldn't run me off the air illegally by sending me warning letters, he began instructing other hams not to talk to me, so that *even when I was merely identifying my transmissions as required by Sec. 97.119(a) of Part 97*, Hollingsworth would be able to claim I was making one-way transmissions in violation of Sec. 97.113(b) of Part 97! In another email, Hollingsworth complained to a ham that he wasn't making any progress in his attempts to run me

2 The so-called “whorehouse days” at the Commission. Ray, William B.: “FCC: The Ups and Downs of Radio-TV Regulation”, Iowa State University Press, 1990. Mr. Ray was the former Chief of the Broadcast Bureau, so if anyone ever had an incentive to defend the Commission, Mr. Ray did; however, he tells the truth. Such declarations against interest lend great credibility to his narrative.

off the air illegally by claiming I was making one-way transmissions because other hams wanted to talk to me, so would the ham please tell everyone in the roundtable QSO not to talk to me? Etc., etc.!! Trust me on this; I am not making it up. And it's definitely not "hallucinatory", Mr. ALJ. I have copies of the emails and, indeed, have previously filed them herein. The ALJ needs to punish such behavior by the Enforcement Bureau by summarily renewing my license.

3. The Commission has no right to regulate speech in the amateur service.

The Commission has propounded absolutely no logical rationale for distinguishing between speech and so-called "interference" or "jamming" in the amateur service. On the contrary, the Bureau's approach is deliberately and completely arbitrary and capricious: Anything the Commission doesn't happen to like becomes "interference" or "jamming", and it tries to keep hams guessing about the extent of their free-speech rights so they won't exercise them. As a result, amateur operators are denied due process because they receive no advance notice of what speech is prohibited.

So in the year 2000, I got into a spirited discussion with another ham during the course of a roundtable conversation on the 75-meter band, as the result of which he got angry and tried to order me off the frequency. Of course he had no right to do that, so I refused to go. A couple of months later I received a letter from "SCARE"⁴: Riley Hollingsworth of the Enforcement Bureau, claiming that I had been "interfering" with the other station, and purporting to therefore summarily modify my Advanced class license by banning me from four frequencies on the 75-meter band (which I later learned Hollingsworth considered to be "trouble frequencies"), three of which I had never even used. That letter clearly violated both the Administrative Procedure Act⁵, which requires an ALJ hearing over such a license modification, and Sec. 97.27 of Part 97⁶, which establishes a due process procedure for modifying license grants in the amateur service. Moreover, I had done nothing to "jam" the other station; I had simply refused to leave the frequency at his request.

3 At the time, the Act was interpreted as requiring these licenses to be awarded based on the competitive merit of the license application.

4 Special Counsel for Amateur Radio Enforcement. We were all supposed to be "scared" of the E.B. after (as even Hollingsworth admits) it had been missing in action from the enforcement front for the previous 15 years.

5 Under Sec. 551 of the APA (5 USC Secs. 551) the issuance or modification of a license by a federal agency is an "adjudication" requiring full due process (notice and a hearing), and under APA Sec. 551(13) a license is specifically included as an "agency action" which invokes the adjudicative hearing requirements of APA Sec. 554.

6 47 CFR Sec. 97.27.

The ALJ should also be aware that Hollingsworth traveled all around the country on an apology tour in 2000 at taxpayer expense, in which he informed amateur radio organizations he was sorry the Bureau had been inactive in its enforcement duties for the previous 15 years, but that he had been instructed by his boss, Richard Lee, to compensate for that absence by ignoring the “legal niceties” and by running the so-called “jammers” off the air by hook or crook; by legal or illegal means. These statements were reported by various amateur radio publications.

I told Hollingsworth that his letter was ridiculous, and then he got mad at me. He then proceeded to write me another letter in which he claimed he had the right to restrict my speech. Again, he didn't come right out and say that's what he was doing; instead, he pursued the “FUD factor”: he tried to instill fear, uncertainty and doubt in my mind about my free speech rights, in order to chill my exercise of those rights, but that didn't work.

This highly-disingenuous and improvident letter, of the same type and language that he sent to many other amateur licensees, consisted of two paragraphs. The first paragraph said, essentially, “your transmissions may not meet the 'basis and purpose' requirements set forth in Sec. 97.1⁷ of Part 97”. But Sec. 97.1 says nothing about amateur free-speech rights. It is instead a very vague and general statement of the purposes of amateur radio, and cannot possibly serve as any legal notification to anyone about the restriction of his free-speech rights by the Commission. However, Hollingsworth seemed to suggest in no uncertain terms in this first paragraph of said letter that Sec. 97.1 gave him some legal right to restrict amateurs' speech, although he did not specify the exact extent of that right.

The second paragraph of the letter was basically a disclaimer, wherein Hollingsworth stated he couldn't censor our speech under Sec. 326 of the Act. So if he can't restrict our speech under Sec. 326, what was the point of the first paragraph? Merely to instill the “FUD factor” of course; in other words, to chill our free-speech rights by making us reluctant to exercise them. The subsequent history of the case is largely inconsequential. It was a completely bogus case to begin with, and it still is a completely bogus case.

The Commission really *does* believe that it has the power to regulate its licensees' free-speech rights, and that it is not subject to the Constitution or to the First Amendment's prohibition thereof. Apparently the Commisison has convinced itself that it is some new kind of agency, sui generis, which neither arises from nor exists under our Constitution, but instead

7 47 CFR Sec. 97.1

enjoys its own separate existence, independent of the Constitution. That is essentially what David Hartshorn, Senior Agent for the Western Region of the E.B., told me when he inspected my station on August 28, 2015; that is what the Commisison tells its licensees, and that is the agency culture and group psychology within the Commission. In furtherance of that incorrect group psychology, the Commission argues that the case of Gross v. FCC⁸ stands for the proposition that it may regulate its licensees' speech, but that is a completely incorrect reading of the case.

Gross was an amateur licensee who wanted to use the amateur radio service for commercial purposes; namely, to communicate with his business vehicles. He could have done this perfectly legally on the citizen's band, or he could have obtained a commercial radio license if he didn't want to use the CB frequencies, but he wanted to use the amateur bands instead. Gross admitted that this would constitute a remunerative use of the amateur radio service, but claimed he had a “free-speech right” to use the amateur bands for remunerative purposes. Although Gross tried mightily to characterize his case as involving free-speech issues, the Court of Appeal disagreed. The Court decided in the Commission's favor on the ground that the word “amateur” in Section 3(2) of the Act⁹ means just that: it defines the amateur service as one wherein a radio station is operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest. Then the Court of Appeals held that Sections 303(a) and (b) of the Act¹⁰ authorize the FCC to “[c]lassify radio stations” and to “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class”. Obviously Gross was a “statutory authorization” and “classification of radio services” case, not a free-speech case as Gross and the Commission incorrectly claim. Gross stands only for the proposition, and nothing else, that if you file a court challenge to the Commission's specific statutory authority and its legal ability to classify types of radio stations, you will lose. But I think we already knew that, so Gross really adds nothing to the body of communications law. Nevertheless, ever since Gross was decided the Commission has attempted to claim, based merely on Gross's mischaracterization of his case as involving free speech, that it indeed involved free-speech issues and therefore the Commission can regulate our speech. That is clearly incorrect as a matter of law and cannot be permitted to continue.

8 480 F.2d 1288, U.S. Court of Appeals for the Second Circuit (1973).

9 47 USC Sec. 153(2).

10 47 U.S.C. Secs. 303(a) and (b).

The Commission also argues, pursuant to the decision in Lafayette Radio Electronics Corp. v. United States¹¹, that it can limit amateurs' speech on the basis that "the FCC can prohibit a certain type of conversation over a particular frequency where the alternative would be to deny to many intended users any access to the frequency". However, Lafayette Radio is a logical non-starter herein because there were not "many intended users" being denied access to the frequency in question. I was simply participating in the roundtable conversation, just like everyone else, and everything I said was speech, not "jamming". Nobody was being prevented from using the frequency due to my presence. I was always willing to share the frequency. The amateurs who make this kind of complaint appear to incorrectly believe they are entitled to an exclusive frequency assignment, which would of course violate Sec. 97.101(b) of Part 97. In order for Lafayette Radio to apply, there would have to be long-term, deliberate jamming, as appeared in the WA6JIY (Kerr)¹² and WA6CGI (Armstrong)¹³ cases, which prevent a large number of amateurs from using the frequency during an extended period of time. These features are completely absent from the instant case.

By analogy, Red Lion Broadcasting v. FCC¹⁴ in effect establishes that the Commission cannot regulate speech in the amateur service. Admittedly Red Lion was a broadcast licensee case, and therefore not precisely comparable to an amateur case, but the ALJ must remember that we have never had any Sec. 402 appeals decided by the Washington, D.C. Circuit Court of Appeals in amateur cases¹⁵ precisely because it is a non-remunerative radio service, and there-

11 345 F.2d 278 (2nd Circuit, 1965).

12 PR Docket No. 81-66; 91 FCC2d 110 (1982); licensee found to have transmitted a brief tape loop continuously and repeatedly over a high-level VHF repeater system for a period of more than three days, preventing anyone else from using the repeater during that period.

13 PR Docket No. 81-826; 92 FCC2d 491 (1982); licensee found to have jammed a high-level VHF repeater due to a vendetta against the club owning it, which resulted in *all* of the 2-meter repeaters in the Los Angeles area switching from carrier squelch (open) mode to P/L (private line; *i.e.*, closed) mode in order to prevent interference. The licensee was found to have falsely claimed that he made the transmissions in the course of research, or as an experiment. Armstrong was found to be unqualified to hold an amateur license on character grounds because he was found to have lied during his ALJ hearing about the reasons for his jamming. Despite the foregoing adjudicated character findings and rules violations, the Private Radio Bureau gave Armstrong his license back immediately after he agreed not to file a Sec. 402 petition! So what is the point of FCC enforcement, anyway? Obviously, only to make phony, concocted "administrative law" so the Commission can brain-wash, threaten, coerce and bluff amateurs into doing nothing on the air of which the Bureau would ever disapprove; in other words, to illegally and pro-actively limit amateurs' Constitutional rights so that the Bureau will never have to do any real enforcement work.

14 395 US 367 (1969). Some academics have, in my opinion, credibly criticized Red Lion as being outdated, largely due to changes in technology since it was decided, and argued that it is likely to be overruled by the Supreme Court someday, on the basis that in this day and age it is too restrictive of broadcasters' free-speech rights (citations omitted).

15 The only exception, to my knowledge, being KV4FZ (Schoenbohm), U.S. Court of Appeals for the D.C. Circuit, No. 98-1516 (2000), in which the only issue was whether the Commission's character rule applied to an admitted

fore hams are either unwilling or unable to spend the kind of money necessary to prosecute an amateur licensing case into the Court of Appeals. So we have to predict how the courts would rule in an amateur case by drawing careful analogies to their decisions in broadcast cases: “careful” because we must never forget the essential and important differences between a remunerative and a non-remunerative radio service. When doing so, we find that Red Lion's “broadcast-case analogy” clearly leads to an a fortiori conclusion concerning the amateur service: applying Red Lion's logic to the amateur radio service forces the conclusion that the Commission has no power whatsoever to regulate speech therein.

The Supreme Court began its discussion in Red Lion by stating that, in general, the Commission has no power to regulate its licensees' speech, but that if certain factors exist then it may regulate *broadcasters'* speech in a limited way. The two main factors that the Red Lion court said permit the Commission to regulate broadcasters' speech are that the broadcast licensee has a fixed frequency assignment and that he may utilize his license for remunerative purposes. However, both of these Red Lion factors are *prohibited* in the amateur service¹⁶. Nor may amateurs broadcast.¹⁷ The conversations in the amateur service are strictly two-way discussions (*i.e.*, protected speech), not one-way broadcasts; so there is no “public” to protect (again, required by Red Lion before the Commission can regulate broadcasters' speech) because amateurs are talking to each other, not to the general public. Nor, due to the very nature of the amateur radio service, is there any substantial possibility of unwelcome verbal intrusion into the homes of the general public, another Red Lion requirement that is entirely missing in the context of amateur radio. In other words, *all* of Red Lion's requirements are *absent* in amateur radio.

But even if the Commission *were* prima facie entitled to regulate amateurs' free-speech rights under Red Lion, which it isn't, the Commission still couldn't do so legally. That is because amateurs would be entitled to advance notice of what speech is restricted, so the Commission would first have to enunciate intelligible standards for what speech it proposes to

felony conviction. Not only is Schoenbohm inapplicable to this case because I have never been charged with or convicted of *any* crime, whether felony or misdemeanor, but also because Schoenbohm's attorneys did not raise the issue of whether the character rule applies to the amateur service in the first place. The rule plainly states that it applies only to broadcasters, and hams cannot broadcast. Since Schoenbohm's attorneys failed to raise said issue, the case is *not res judicata* with respect to same.

16 47 CFR Secs. 97.101(b) and 97.113(a)(2).

17 47 CFR Sec. 97.113(b). “Broadcasting” is defined in Sec. 3(6) of the Act [47 USC Sec. 153(6)] as “the dissemination of radio communications *intended to be received by the public* [emphasis added], directly or by the intermediary of relay stations.”

prohibit (this would be accomplished by rulemaking or other public notice procedures, which the Commission has not done); and once the Commission had enunciated such standards, it would then have to prove: (1) that its proposed speech restrictions constitute the least onerous, least burdensome method of (2) achieving a compelling governmental interest.

So the first problem is that the Commission has never promulgated such standards in the amateur service, and never would do so, because they know very well they could never restrict amateurs' free speech in a way that would meet the constitutional "vagueness" test. And since the Commission never has, and never could, enunciate facially-Constitutional free-speech standards, the second and third requirements - "least burdensome method" and "compelling governmental interest" – cannot possibly be established. So the Commission simply can't regulate amateurs' speech on the air, period (except for criminal acts). Amateurs are entitled to the Supreme Court's most protective "strict scrutiny", "chilling effect" free-speech standard. Of course, that means that nothing amateurs say on the air can be used against them in a licensing case because any other procedure would chill amateurs' free-speech rights. I therefore object to any statements, testimony or documents being introduced into evidence herein, claiming to prove anything I have ever said on the air, as being irrelevant, immaterial and unduly prejudicial. I am entitled to say anything I want to on the air without having to worry about the Enforcement Bureau second-guessing it; otherwise my free-speech rights would be chilled.

Furthermore, none of the acts alleged in the related Notice of Apparent Liability/ Forfeiture Order (the referral of which the Department of Justice declined to accept) are admissible herein under Section 504(c) of the Act. Section 504(c) provides as follows:

(c) In any case where the Commission issues a notice of apparent liability looking toward the imposition of a forfeiture under this Act, that fact shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdiction has ordered payment of such forfeiture, and such order has become final.

Since neither exception (i) nor exception (ii) to Section 504(c) applies to this case, the Enforcement Bureau cannot use any evidence from the NAL/FO case to my prejudice herein, so such evidence must be held to be inadmissible as a matter of law.

4. There is no prohibition of indecency in the amateur service. To the extent that the Hearing Designation Order alleges indecency, I reply that the indecency prohibition appearing in

Sec. 97.113(a)(4)¹⁸ is unenforceable in the amateur service under Pacifica¹⁹ and Sable Communications v. California.²⁰

The leading case on indecency in the amateur service is that of N6BHU (Hildebrand)²¹, wherein the ALJ found Hildebrand's speech indecent, but then on appeal the former Review Board found it to be protected speech under Red Lion and Pacifica; and then the full Commission reversed the Review Board and reinstated the ALJ's decision. No Sec. 402 appeal was ever filed in the D.C. Circuit in Hildebrand because the Commission always bribes licensees not to appeal into the court system by offering to give them their licenses back immediately if they agree not to file a Sec. 402 suit. That way the Enforcement Bureau artificially creates and maintains phony, incorrect FCC “administrative law”, which it uses to try to scare, threaten and brainwash amateur operators into believing it has powers it does not have, because the Enforcement Bureau really doesn't want to do any amateur radio enforcement at all, so it pro-actively and illegally tries to scare and threaten amateurs into submission of their Constitutional rights.

I submit that the Review Board got Hildebrand right, and the full Commission got it wrong because they were brainwashed by the Bureau's phony, self-created “administrative law”, which results mainly from stupid, incorrect advisory opinions from the Bureau's attorneys. I believe that if the indecency issues in Hildebrand were ever presented to the D.C. Circuit, there can be little doubt that the Court of Appeals would agree with the Review Board in Hildebrand; with Red Lion; and with Sable Communications in finding the indecency prohibition of Sec. 97.113(a)(4) of Part 97 to be unconstitutional, and if the Enforcement Bureau is unwise enough to try to take this case to a hearing (especially if it tries to do it in absentia), that is exactly what is going to happen on appeal.

5. There is no “character rule” issue. The Bureau must have a factual predicate (such as conviction of a felony or fraud affecting the U.S. Government) in order to invoke the character rule (otherwise the situation becomes a government witch hunt), but it doesn't have one. I have been a good boy all my life; I've never been charged with, much less convicted of, any crime whatsoever, whether felony or misdemeanor; I've been a member of my State Bar ever since

18 47 CFR Sec. 97.113(a)(4)

19 438 US 726 (1978).

20 492 US 115 (1989).

21 PR Docket No. 81-302; 2 FCC Rcd. Vol 9, p. 2708; FCC 87-142; 92 FCC 2d 1241.

1972 with nary a disciplinary action ever taken against me, whether public or private; and I've always paid my taxes and my bills. The *real* “character issue” in this case is that the ALJ and the Bureau are claiming I violated the character rule without having the necessary factual predicate for making such a claim. The Bureau first raised the character rule as a bootstrap because they couldn't prove an interference case, and then when I objected to their doing so they claimed I had bad character because I objected to the bootstrap. It's simply a complete bootstrap all the way²², and I will never stand for it.

Besides, the character rule says on its face that it applies only to broadcasters; hams cannot broadcast; and I don't care if the Bureau's dumb attorneys (I don't mean its present counsel, Ms. Kane, Mr. ALJ; I mean the ones who sit in their offices and write those stupid advisory opinions that the Bureau requests them to write, so it can add to its phony, contrived “administrative law” of the amateur radio service, the purpose of which is only to permit the Bureau to do no enforcement work whatsoever while falsely claiming the opposite, and while making a scapegoat out of anyone who points out what they are really doing) have advised them that the character rule means the exact opposite of what it says. After all, we are living in the age of textualist jurisprudence before our Supreme Court; so why are you asking me to pretend otherwise or else face “abuse of process” charges? I simply don't think the Bureau's interpretation of the character rule will prevail before the D.C. Circuit because it contradicts the textualism doctrine which we are being taught by our Supreme Court, and I would like to have the benefit of a textualist interpretation of the character rule, since the Supreme Court appears to be offering it to me. There is nothing wrong about wanting that, so please don't threaten me with abuse of process charges again if I raise the issue. Accordingly, if the Bureau continues to insist upon raising the character issue, I think we should plan on arguing same before the D.C. Circuit.

6. Playing of recordings in the amateur service is specifically authorized by Part 97. To the extent that the Hearing Designation Order alleges that I violated Part 97 by playing recordings, I would point out that Part 97, Sec. 97.113, paragraph (e), specifically provides, in its first sentence, that such transmissions are legally permissible, i.e., the words saying “other than an amateur station”.

22 “It's rocks all the way down!” - William James.

7. The Commission cannot force me to attend a hearing in Washington, D.C.

First of all, let us not forget all of the many public statements that Riley Hollingsworth made, in which he threatened the amateur community that anyone who did anything he didn't like would be required to appear in Washington, D.C. for a non-renewal hearing! The only problem was, Riley hadn't read the "rebuttable presumption of licensee solvency" cases concerning venue at FCC ALJ hearings.

Nor should we forget that both Judge Steinberg and Judge Sippel had previously made orders finding good cause to exist for allowing me to appear at all hearings by speakerphone, and there has been no change in circumstances since those orders were made that would justify the unfair, radical step that ALJ Sippel took in ordering me to appear in person in Washington, D.C. for all hearings. The ALJ was just mad at me because I appealed to the Commission from his denial of my petition to disqualify him, as I had the right to do under the Commission's rules. That is not a proper or legal reason, nor does it constitute a change in circumstances, sufficient to justify modifying the previous orders. It also amounts to illegal "viewpoint discrimination" against me, and either the Commission or the D.C. Circuit will certainly reverse such an unfair and legally-unfounded ruling on said basis.

The ALJ is clearly a rather insecure person who is in complete denial about his personality issues, so apparently he doesn't even realize how disrespectful he is to the parties who appear before him. The Commission tried to warn the ALJ about his improper attitude and temperament in Titus²³ due to the terrible disrespect the ALJ displayed toward poor Detective Schilling. In Titus, rather than evaluating and analyzing Det. Schilling's testimony fairly and evenhandedly, the ALJ engaged in totally unprovoked, gratuitous personal insults and attack. Although the Commission tried to warn the ALJ in its Titus decision to get off his high horse and start acting like a decent, respectable, respectful person, the ALJ has ignored the Commission's advice and is still behaving like an immature, extremely insecure individual who has very little self-knowledge, so he can't handle the truth about himself and he therefore lashes out in anger anytime anyone tries to tell him that he is coming across to the parties who appear before him as a vicious, angry, narcissistic old man. I predict that the ALJ is going to continue to have problems with the Commission unless and until he gets his head on straight, learns to accept the truth about himself, and stops being so angry, mean and disrespectful to other people.

²³ EB Docket No. 07-13, FCC 14-177 (2014). I won't even mention what Commissioner O'Reilly has been saying about the ALJ process recently. I'll just completely omit what Commissioner O'Reilly has been saying.

That may indeed be a continuing problem for the ALJ, because he is apparently so used to broadcasting licensees who run scared of the Commission, and who are therefore afraid to say anything the ALJ doesn't like, that he just can't handle it when a licensee like me stands up for himself against the ALJ's phony, unwarranted and extremely disrespectful ad hominem attacks.

Accordingly, if you want to proceed to a hearing in Washington, D.C. in my absence (because I will not be appearing there), then let's plan to argue the issue before the Commission and the D.C. Circuit.

Second, the ALJ applied an entirely incorrect standard in deciding the venue issue. The ALJ ruled that I had to qualify for in forma pauperis ("IFP") status in order to obtain a field hearing, but IFP status has nothing to do with venue. Nor, conversely, does venue have anything to do with IFP status; they totally separate and distinct legal issues. And it is really quite shocking that the ALJ doesn't understand this. Perhaps the ALJ didn't go to a good law school, like I did. That's why I am trying to help the ALJ gain a better understanding of his own personality and of the law. Amateur radio is really all about helping people, after all.

In deciding the venue issue, the ALJ should have applied the Commission's case law concerning the "rebuttable presumption of licensee solvency" (hereinafter "rebuttable presumption"). Or to be more correct, if the ALJ *did* attempt to apply the rebuttable presumption cases herein, it would quickly become obvious that they apply only to broadcast licensees, and have no application whatsoever to an amateur case, because the only purpose of establishing the rebuttable presumption in the first place is to see if a broadcast licensee obtains enough profit from his remunerative-type license to be able to afford a trip to Washington, D.C. Therefore the rebuttable presumption is entirely inapplicable to a non-remunerative radio service such as the amateur service. Because an amateur license is entirely non-remunerative in nature, the Commission has no choice but to hold a field hearing.

In all of the five leading amateur service cases on the subject of venue [WA6JIY (Kerr)²⁴, N6BHU (Hildebrand)²⁵, WA6CGI (Armstrong); (back on the air immediately after revocation as KI6JL)²⁶, WB6MMJ (Ballinger)²⁷ and N6OZ (Gilbeau)²⁸ (Gilbeau subsequently allowed his license to lapse and his former call sign was reassigned to another amateur operator)] the former

24 Op cit.

25 Op cit.

26 Op cit.

27 PR Docket No. 84-291; FCC 84D-28 (1984).

28 91 FCC 2d 98 (1982)

Private Radio Bureau realized it was required under the "rebuttable presumption" to hold field hearings in the city nearest to the licensee's residence. The only two other reported amateur cases that were heard in Washington, D.C. [N6NHG (Mitnick)²⁹ and KB7ILD (Titus)³⁰] are irrelevant because both applicants were represented by an attorney who has his principal office in Washington, D.C.; said attorney therefore wanted the hearing to be held there; and therefore he did not raise the venue issue in those two cases.

The Commission thus has a long-standing, legally-established policy of holding field hearings in amateur cases in the city nearest the licensee's residence, and it has not complied with the APA's requirements prior to changing said policy; namely, it has not examined the relevant data and articulated a satisfactory explanation for its action of changing said long-standing policy, as required by 5 USC Sec. 706(2)(A).

Of course it is entirely inappropriate to require me to travel to Washington to renew a non-remunerative license, and I am rather insulted that the ALJ thinks I would tolerate being treated this way. This may be another issue that we will have to argue before the Commission and the D.C. Circuit if the E.B. refuses to renew my amateur license.

8. There is no enforceable prohibition of the transmission of music in Part 97.

To the extent that the Hearing Designation Order alleges that I transmitted music in violation of Part 97, Sec. 97.113, paragraph (4), I reply that there never was any complete prohibition of music in amateur service in the first place. Partly that is because the U.S. Government cannot enforce a blanket prohibition against an entire class of speech, and partly it is because the Commission cannot give adequate notice to amateurs about what music is and what it is not. I've had no notice from the Commission about what music is, and I can't figure out what they mean by it, so my free-speech rights have been chilled.

I want to be able to use music to accompany my transmissions of core political speech, just like the U.S. Government uses music, for example, to instill patriotism³¹. Clearly, such transmissions of mine are primarily speech, and the music is used only for the subsidiary purpose of drawing the listener's attention to the political message. The Commission has never

29 WT Docket No. 01-344, FCC 02D-02; decision of ALJ Sippel, 2002.

30 E.B. Docket No. 07-13; FCC No. 10D-01; decision of ALJ Sippel, 2010.

31 As the ALJ might imagine, nobody ever complains to the FCC when some amateur plays "The Star Spangled Banner" on the air.

promulgated any standards defining the exact contours of the “music prohibition”, and they seem to claim that every transmission containing any music at all is “music” within the meaning of Sec. 97.113(4), even when it clearly consists primarily of speech. This policy flies in the face of the U.S. Supreme Court's free-speech opinions.

The Commisison *needs to have* reasonable exceptions to its music prohibition in order to save the regulation from unconstitutionality as a blanket prohibition of speech, and they've got one in the “granddaughter's piano recital” exception, as hereinafter appears.

The other reason for the lack of a complete music prohibition was because broadcasters and amateurs agreed in 1919, and the Department of Commerce (which then regulated radio) therefore ordered, that in the prohibition of music in the amateur radio service the term “music” was used as a legal term of art which meant, essentially, “only music having pecuniary value; i.e., such music as might reasonably be expected to compete with that transmitted by commercial broadcasters”. Until 1919 hams could and did play even *commercial* music perfectly legally, and prior to that time they did indeed compete with licensed broadcasters for audience. In 1919 the broadcasters complained to the Commerce Department that hams represented unfair economic competition because the broadcasters incurred overhead expenses while the hams did not.

In the resulting negotiations, the Department of Commerce gave hams the so-called “granddaughter's piano recital” exception to the music prohibition, allowing hams to transmit any “music” that has no pecuniary value. The broadcasters never insisted that hams be prohibited from transmitting any and all music, nor did the hams ever agree to do so, but now the Bureau wants to impose a blanket prohibition by denying the existence of the foregoing legislative history. The music prohibition is not a complete one, nor could it be so under our Constitution. It permits any music that is not commercially viable. This has been the law ever since 1919, and it still is the law. Therefore I have never transmitted any music that violated Part 97, Sec. 97.113(4), and if the Bureau tries to prove otherwise they will lose because I have much more knowledge about the exact nature of the transmissions than they do.

9. Completeness of production of documents and answers to interrogatories. Although I have fully complied with discovery by answering all of the interrogatories and producing all of the documents which the Bureau propounded to me, and which I have been ordered to answer and produce, we really don't get to this point due to the clear legal infirmities of the Bureau's

case and its inability to present any evidence whatsoever concerning my statements on the air. The ALJ should simply dismiss the Hearing Designation Order and renew my license without further proceedings herein.

10. Date estimated when all discovery is expected to be completed. This is not really a relevant inquiry, because none of the Bureau's evidence concerning statements made by me on the air is inadmissible, since the Commisison has no power to regulate my free-speech rights and the introduction of such evidence would chill my free speech. Therefore the Bureau can produce no admissible evidence herein.

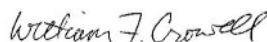
11. Readiness for trial including any agreement on receiving any non-party testimony via teleconference. The case is not ready to be set for trial, and must instead be dismissed and my license renewed, due to the inherent legal defects of the Bureau's case, such as the complete inadmissibility of anything I have said on the air.

12. Proposed trial dates at the Federal Communications Commission in Washington, D.C.: None. I will decline to appear in Washington, D.C. for a hearing herein because such a venue is clearly illegal and improper, and will avail myself of my legal remedies instead.

13. Equal Access to Justice Act ("EAJA") attorney's fees must be awarded under 5 USC Sec. 504 because, due to Hollingsworth's illegal vendetta against me, no substantial justification existed for the Commission's actions herein. I am an attorney; I have expended many hours of my time in defending this case; and I want to be paid for my time under the EAJA.

Dated: June 6, 2018

Respectfully submitted,



William F. Crowell, Licensee

PROOF OF ELECTRONIC SERVICE

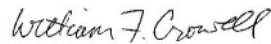
I am a citizen of the United States and a resident of El Dorado County, California. I am the Applicant-licensee herein. I am over the age of 18 years. My address is: 1110 Pleasant Valley Road, Diamond Springs, California 95619-9221.

On June 7, 2018 I served the foregoing Applicant's Status Report on all interested parties electronically herein by attaching same to an email addressed to the correct email address for Pamela S. Kane, Esquire, who is the attorney representing the FCC's Enforcement Bureau herein.

On said date I also filed said Status Report electronically with the ALJ herein by attaching a copy thereof to an email sent to the correct email address for Marlene S. Dortch, the Commission's Secretary, marked "Attention ALJ Sippel".

On said date I also filed a copy of said Status Report on the Commission's electronic filing system.

I declare under penalty of perjury that the foregoing is true and correct, and that this proof of service was executed on June 7, 2018 at Diamond Springs, California.



William F. Crowell