

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

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

To: Marlene H. Dortch, Secretary  
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU’S REPLY IN SUPPORT OF ITS MOTION TO DISMISS  
THE RENEWAL APPLICATION FOR FAILURE TO PROSECUTE AND TO  
TERMINATE THE PROCEEDING**

1. On June 12, 2018, the Enforcement Bureau (Bureau) filed a motion to dismiss with prejudice the above-captioned application filed by William F. Crowell (Crowell) and to terminate the hearing proceeding based on Crowell’s unequivocal and willful statements that he will not appear at the hearing in Washington, D.C. (Motion).<sup>1</sup> On June 22, 2018, Crowell filed an opposition to the Bureau’s motion (Opposition).<sup>2</sup> The Chief, Enforcement Bureau, by her attorneys, herein submits the Bureau’s reply in further support of its Motion.<sup>3</sup>

**Crowell’s Opposition Does Not Dispute the Substance of the Bureau’s Motion**

2. The basis of the Bureau’s Motion is simple: Crowell has repetitively and emphatically stated that he will not appear at the hearing to commence in Washington, D.C. and

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<sup>1</sup> See Enforcement Bureau’s Motion to Dismiss the Renewal Application for Failure to Prosecute and to Terminate the Proceeding (filed June 12, 2018) (Motion).

<sup>2</sup> See Applicant’s Opposition to Enforcement Bureau’s Motion to Dismiss Renewal Application (filed June 22, 2018) (Opposition).

<sup>3</sup> See 47 CFR § 1.294(c).

present evidence on the designated issues,<sup>4</sup> and his refusal to appear should be treated as a waiver of his right to prosecute the pending application and should result in the dismissal of that application with prejudice and termination of the hearing.<sup>5</sup> As the Bureau argued in its Motion, there is no reason for its staff, the Office of the Administrative Law Judge, and/or the Commission to expend valuable time and resources adjudicating the merits of an application that Crowell has waived his right to prosecute.<sup>6</sup>

3. Crowell's Opposition does nothing to dispute this.<sup>7</sup> Crowell does not assert, for example, that he *will* appear at the hearing in Washington, D.C. If anything, he confirms that he *will not* appear, asserting "I never agreed to appear in Washington, D.C."<sup>8</sup> Moreover, Crowell fails to address the Bureau's contention that his refusal to appear at the Washington, D.C. hearing should result in the dismissal of his pending application with prejudice and termination of the hearing proceeding. As a result, the Bureau's Motion is in all aspects unopposed and should be granted.

**Crowell's Opposition is an Unauthorized Supplement  
of his Earlier Appeal of *Order*, FCC 17M-19**

4. The question presently before the Presiding Judge is whether the Bureau's Motion should be granted. As noted above, Crowell's Opposition does not challenge either the factual or legal basis upon which the Bureau relies in support of its Motion. Instead, Crowell devotes his Opposition to challenging, *again*, the validity of the Presiding Judge's *Order* denying Crowell

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<sup>4</sup> See Motion at 3-5.

<sup>5</sup> See *id.* at 4-5.

<sup>6</sup> See *id.* at 4.

<sup>7</sup> See, e.g., Opposition at 3-21, paras. 1-18.

<sup>8</sup> Opposition at 3.

the opportunity for a field hearing.<sup>9</sup>

5. As the Bureau explained in its Motion, in March 2017, Crowell filed a motion for a field hearing, asserting that he did not have the financial means to travel to Washington, D.C.<sup>10</sup> After considering the record, and the Bureau's opposition, the Presiding Judge denied Crowell's motion on the basis that the Hearing Designation Order (HDO) had delegated to the Presiding Judge the authority to set the place of the hearing and that Judge Steinberg had already directed that the hearing take place in Washington, D.C.<sup>11</sup> The Presiding Judge also recognized that the Bureau had made "a strong showing of the public interests served by holding the hearing in Washington, D.C."<sup>12</sup>

6. Within days of the issuance of this *Order*, Crowell opposed the Presiding Judge's refusal to set a field hearing.<sup>13</sup> The only argument Crowell made in challenging the Presiding Judge's refusal was that the Presiding Judge had no legal basis to require Crowell to demonstrate that he met the *in forma pauperis* standard.<sup>14</sup> However, Crowell's financial solvency does not appear to have been a basis upon which the Presiding Judge ruled against Crowell's request for a field hearing. Rather, as discussed above, in denying Crowell a field hearing, the Presiding Judge relied on the language in the HDO, Judge Steinberg's earlier *Order* setting the location as

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<sup>9</sup> See, e.g., Opposition at 3-21, paras. 1-16, 18.

<sup>10</sup> See Motion at 2. See also Licensee's Motion for a Field Hearing [Title 47 CFR, Chapter I, Subchapter A, Part I, Subpart B, Sec. 1.253] (filed Mar. 30, 2017).

<sup>11</sup> See *Order*, FCC 17M-19 (ALJ, rel. Apr. 7, 2017), at 2-3.

<sup>12</sup> *Id.* at n.7.

<sup>13</sup> See Licensee's Exceptions to ALJ's Memoranda, Opinions and Orders dated April 7, 2017 (FCC 17M-18 & 17M-19) (filed Apr. 10, 2017) at 3-4 (Exceptions). Although Crowell was required to file a separate request for permission to file an appeal before doing so, it appears that Crowell blended both his request and the substance of his appeal into a single document. See *id.*; see also 47 C.F.R. § 1.301(b). The Bureau did not oppose this appeal at the time it was filed because the proceeding had already been suspended pending resolution of Crowell's appeal of the *Order* on his motion to disqualify the Presiding Judge. See *Order*, FCC 17M-18 (ALJ rel. Apr. 7, 2017) and 47 CFR § 1.245(4). Setting aside the procedural deficiencies in Crowell's filing, the Bureau opposes Crowell's appeal herein.

<sup>14</sup> See Exceptions at 3-4.

Washington, D.C., and the Bureau's public interest arguments.<sup>15</sup> To the extent that the Presiding Judge imposed an *in forma pauperis* standard on Crowell, it was done so in connection with Crowell's request that he be allowed to attend prehearing conferences by telephone, and not in connection with his request for a field hearing.<sup>16</sup> Thus, the only argument Crowell made in challenging the Presiding Judge's refusal to allow a field hearing is inapposite and his appeal on this issue should be denied.

7. Although the Presiding Judge has not yet ruled on Crowell's appeal of *Order*, FCC 17M-19, Crowell cannot simply hijack a pleading cycle that should be directed to the merits of the Bureau's Motion to supplement his earlier challenge to the Presiding Judge's *Order*. The Commission's rules are clear that the deadline to appeal that *Order* has long since passed.<sup>17</sup> Moreover, Crowell has neither requested – nor asserted any basis for – permission to supplement his pending appeal. Crowell's Opposition, therefore, is nothing more than an unauthorized “second bite” at the proverbial apple that the Presiding Judge should ignore.

### **Conclusion**

8. For the reasons set forth above, and in the Bureau's Motion, the Bureau respectfully requests that Presiding Judge dismiss Crowell's renewal application for Amateur Radio Service Station W6WBJ with prejudice for failure to prosecute and terminate the hearing proceeding.

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<sup>15</sup> See *Order*, FCC 17M-19, at 2-3.

<sup>16</sup> See *id.* at 2.

<sup>17</sup> See 47 CFR § 1.301(b).

Respectfully submitted,

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June 29, 2018

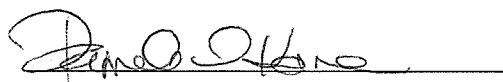
## **CERTIFICATE OF SERVICE**

Pamela S. Kane certifies that she has on this 29th day of June, 2018, sent copies of the foregoing  
“ENFORCEMENT BUREAU’S REPLY IN SUPPORT OF ITS MOTION TO DISMISS THE  
RENEWAL APPLICATION FOR FAILURE TO PROSECUTE AND TO TERMINATE THE  
PROCEEDING” via email to:

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