

**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: The Commission

**REPLY TO ENFORCEMENT BUREAU'S OPPOSITION TO
MY APPLICATION FOR REVIEW BY THE COMMISSION**
[47 CFR §§1.302(g)]

The Enforcement Bureau's Opposition to my Application for Review lacks merit because it contains three fatal defects: (1) it ignores or mis-states the Commission's rule concerning venue [Rule 1.221(c)]¹; (2) it ignores or mis-states the Commission's rule concerning the Commission's power to reverse and modify the ALJ's decision if it grants review [Rule 1.115(h)(1)(i)]²; and it fails to address any of the Constitutional, statutory or regulatory arguments which I raised in my Application for Review herein [except issues (1) and (2), supra].

1. Venue. The Enforcement Bureau claims I reneged on a 2008 agreement to attend a hearing in Washington, D.C., but I never agreed to that venue because Rule 1.221(c) does not

1 47 CFR Chapter I, Subchapter A, Part 1, Subpart B, §1.221(c).
2 47 CFR Chapter I, Subchapter A, Part 1, Subpart A, §1.115(h)(1)(i).

require me to do so. The ALJ incorrectly applied paragraph (e) of Rule 1.221 to me as a *party* or *licensee*, but paragraph (c) of the Rule, not paragraph (e) thereof, applies to parties, and paragraph (c) doesn't require a party to agree to the specified venue at the outset. Paragraph (e) of Rule 1.221, which provides that intervening parties must agree to a previously-established venue, and on which the ALJ relied, applies only to intervenors, not licensees. Paragraph (e) clearly doesn't apply to me.

The Enforcement Bureau also argues that I waived the venue argument by not “appealing” from Judge Steinberg's original venue order in 2008 (although I promptly excepted to Judge Sippel's 2017 Order setting the venue in Washington, D.C.). But Judge Steinberg's 2008 venue Order was interlocutory in nature, so the right of appeal therefrom was strictly permissive; I would have been required to have *requested permission* to appeal from Judge Steinberg's Order under Commission Rule of Practice and Procedure §1.301(b)³, which is not an appeal by right because said 2008 Order did not involve one of the subjects listed in 47 CFR §1.301(a)⁴, from which a party has the *right* of appeal. So I had no right of appeal from the 2008 venue order that I could have waived in the first instance.

Commission Rule 1.115(e)(1)⁵ provides that “Applications for review of interlocutory rulings made by the Chief Administrative Law Judge shall be deferred until the time when exceptions are filed, unless the Chief Judge certifies the matter to the Commission for review.” Likewise, Commission Rule 1.115(e)(2)⁶ states, in pertinent part: “The failure to file an application for review of an interlocutory ruling made by the Chief Administrative Law Judge, or the denial of such application by the Commission, shall not preclude any party entitled to file exceptions to the initial decision from requesting review of the ruling..[.]” Although paragraphs (e)(1) and (e)(2) of Rule 1.115 seem to apply to cases in which (unlike this case) a hearing has been held, insofar as *interlocutory* rulings are concerned there is no real difference between the two kinds of cases, and thus no persuasive reason exists why the same rationale for the licensee's preservation of exceptions on appeal should not also apply to a case dismissed without a hearing under Rule 1.221(c).

Under the Enforcement Bureau's illogical rationale, it would be completely impossible for me to appeal from the Judge Steinberg's 2008 venue ruling because if I had appealed at the

3 47 CFR Chapter I, Subchapter A, Part 1, Subpart B, §1.301(b).

4 47 CFR Chapter I, Subchapter A, Part 1, Subpart B, §1.301(a).

5 47 CFR Chapter I, Subpart A, Part 1, Subpart A, §1.115(e)(1).

6 47 CFR Chapter I, Subpart A, Part 1, Subpart A, §1.115(e)(2).

time, the request to appeal would probably have been denied by the ALJ; yet the Bureau says I can't appeal at this juncture, either. The Bureau just doesn't want me to be able to contest venue under any circumstances because it is desperate to save money on amateur enforcement, so therefore it is desperate to continue deliberately misinterpreting its venue rule, by maintaining an enforcement regime which threatens to drag amateur licensees to Washington, D.C. for a hearing anytime they say anything the Bureau doesn't happen to like. That way they can shut us up.

2. The Commission's power to provide complete relief in the event that it grants review. Here again, the Enforcement Bureau has incorrectly interpreted the Commission's Rules by arguing that, in the event it should grant review, the Commission has only the limited power to remand the case to the ALJ for further proceedings, and not the power to order summary renewal of my amateur service license.

But on the contrary, Commission Rule 1.115(h)(1)(i)⁷ provides that “If the Commission grants the application for review in whole or in part, it may, in its discretion: (i) simultaneously reverse or modify the order from which review is sought.” Clearly Rule 1.115 contemplates that the Commission will accomplish full, final and substantial justice on review, which in this case requires, at the very least, ordering summary renewal of my amateur service license.

3. The Enforcement Bureau fails to address any of the other Constitutional, statutory or regulatory arguments which I raised in my Application for Review herein. Since this Reply is limited to the scope of the Bureau's Opposition,⁸ I am not permitted to discuss these arguments in detail herein. I wish instead only to point out that in its Opposition, the Bureau *failed entirely* to address the following crucial arguments contained in my Application for Review:

- The illegal enforcement activities of Riley Hollingsworth when he tried to kick-start amateur enforcement in 1998 after a 15-year enforcement hiatus by the former Private Radio Bureau;
- The denial of administrative due process due to the Bureau's unexplained and unexcused 10-year delay since the issuance of the Hearing Designation Order;
- The ALJ's contention that he is not required to follow the APA herein;

⁷ 47 CFR, Chapter I, Subchapter A, Part 1, Subpart A, §1.115(h)(1)(i).

⁸ 47 CFR, Chapter I, Subchapter A, Part 1, Subpart B, §1.302(g).

- The unconstitutional denial of my free-speech rights by the Enforcement Bureau, and its apparent belief that the Constitution doesn't apply to the amateur radio service;
- The bootstrapping of a “character” issue, despite the complete absence of the requisite factual predicate therefor;
- The Bureau's claim that it can Constitutionally prohibit indecency in the amateur service;
- The Bureau's claim that the transmission of even non-remunerative types of music, and of that consisting primarily of core political speech, are prohibited by Part 97;
- The Bureau's maintenance of a “complaint-driven” enforcement regime which violates the First Amendment as applied because it punishes, rather than protects, the minority opinion; and
- The ALJ's threats to make abuse of process findings against me, and to dismiss my renewal application based on such findings, if I argued that I was being denied procedural due process because my papers were not being filed when the Commission received them by mail.

What can the Bureau's failure to address the majority of the important issues in dispute possibly mean? Most likely it is because the Bureau is entirely unable to contradict my arguments, so they should be considered as fully-established against the Bureau on review. Or maybe the Bureau failed to address my other arguments because it does not feel they are relevant because, insofar as the amateur radio service is concerned, it believes it is not bound by the Constitution, or by any statutes or regulations that it happens to disagree with? Or perhaps the Bureau ignored those other arguments because it is in denial about them, because it can't face the truth, because it doesn't believe it can financially afford to administer the amateur service in a legal, Constitutional fashion that complies with the APA? Now candor requires me to admit that I am in no position to contradict the Bureau about this⁹, so if we assume, as the Bureau's actions

9 I recognize and understand that (in complete contrast to broadcast licensees), and if only due to the rather large number of amateur licensees (over 700,000) operating widely-scattered, relatively low-power stations in a non-remunerative radio service, a substantial minority of them may harbor disdain for the Commission's Regulations. Also, absent an NAL, resultant Forfeiture Order and acceptance of the E.B. referral by the Department of Justice (unlikely), amateur licensees have little or no financial incentive to follow the Commission's Rules. Such licensees may therefore be inclined to violate the Rules, so it would probably be very expensive to administer the amateur service legally and constitutionally due to the large number of cases that would inevitably arise. However, in my opinion such disdain on the part of some amateur licensees exists largely because they do not sufficiently understand the difference between the Enforcement Bureau and the Commission because the Bureau always appears as the Commission's staff attorneys in licensing cases. Therefore, unfortunately, most amateurs

and policies clearly appear to suggest, that it would be too expensive to administer the amateur service legally and correctly, then the Commission should get rid of the amateur radio service. Or maybe the amateur service wouldn't be so expensive to administer if the Bureau would just let hams enjoy their free-speech rights under the First Amendment. But to allow the Bureau to continue the status quo concerning amateur enforcement is to have the Commission and the amateur service continue to live a lie.

Because it resulted in a complete denial of my administrative due process rights, it would be relatively easy for the Commission to order summary renewal of my amateur radio license due to the 10-year¹⁰ administrative delay herein. But making such a narrow ruling won't solve the problems that the amateur service faces. The Commission really needs to rule on the rest of the issues I have raised, because right now the amateur service faces a crisis, because it is living a lie that is eating the heart out of the service. The Enforcement Bureau is trying to illegally and unconstitutionally bluff radio amateurs into believing that they have no legal or Constitutional rights as licensees in the amateur service. This definitely should not be allowed to continue.

We must remember that under its delegation of authority from Congress, the Enforcement Bureau is serving merely as the Commission's trial staff in this proceeding, which is governed by the APA¹¹. This means that, should the Commission take advantage of this opportunity to remedy the legal and Constitutional problems of the amateur service, as its trial staff the Bureau will be required to comply with the Commission's order, so that probably an appeal to the District of Columbia Circuit Court of Appeals under §402 of the Act¹² would be neither proper on the Bureau's part, nor necessary on my part. Thus no substantial doubt exists that if the Commission were to pronounce the correct law of the amateur radio service herein, and assuming that no appeal were taken from the Commission's ruling (there probably wouldn't be, if the Commission will please rule correctly), such a pronouncement would become completely effective, going forward, as the law of the amateur radio service, and in the future both the Bureau and all amateur licensees will be bound to comply with such ruling. In other words, this is a great opportunity for the Commission to have the final word; to do something really right;

mistakenly believe that the Commission invariably affirms the ALJ (although I have observed and understand that such is definitely not the case). Therefore this case represents a great opportunity for the Commission to stand up for what is right in the amateur service: to disaffirm, and to distinguish itself from, the Enforcement Bureau's discredited amateur enforcement policies.

10 Or 18 years, counting from the commencement of enforcement proceedings in 2000.

11 47 CFR, Chapter I, Subchapter A, Part 0, Subpart A, §0.111(25)(b)

12 47 U.S.C. §402(b).

and to do something to really help one of its radio services: an important radio service because it is non-remunerative in nature. It is respectfully submitted that such a ruling is greatly needed in order to save the amateur service from the corruption that results from basing administrative practice on bluffing, lies and illegality.

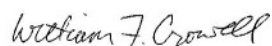
I therefore request that the Commission order summary renewal of my Advanced class operator's license and station license for amateur radio service station W6WBJ. In addition, since the Enforcement Bureau failed entirely to address the remaining issues raised by my Application for Review, I also request that said issues be considered as fully-established on review, for both legal and factual purposes, and that the Commission therefore make the following findings:

1. That the ALJ is required to follow the APA in all cases arising from the amateur service;
2. That the ALJ's Order (18M-05) dismissing my renewal application violated my rights to administrative due process and to a field hearing under the APA;
3. That the Constitution of the United States of America, and particularly the First Amendment thereto, applies to the Enforcement Bureau and to the amateur service;
4. That the "public interest" can never be used as a justification or excuse by the Commission for violating a licensee's Constitutional rights;
5. That the Enforcement Bureau's actions against me violated my free-speech rights under the First Amendment;
6. That no Character Rule violation can possibly exist herein because the factual predicate for same (i.e., conviction of a felony, or defrauding the U.S. Government) is absent;
7. That the Enforcement Bureau cannot Constitutionally regulate indecency in the amateur service;
8. That the Enforcement Bureau cannot Constitutionally prohibit amateur licensees from transmitting non-remunerative music, or music consisting substantially of core political speech;
9. That the Enforcement Bureau's so-called "complaint-driven" enforcement regime violates the First Amendment as applied because it punishes, rather than protects, the minority viewpoint; and

10. That the ALJ's threats to make abuse of process findings against me, and to dismiss my renewal application based on said findings, violated the APA as an improper use of the ALJ's settlement powers.

I declare under penalty of perjury that all of the statements contained in both my Application for Review¹³ and in this Reply are true and correct. This Reply is executed on September 17, 2018 at Diamond Springs, El Dorado County, California.

Respectfully submitted,



William F. Crowell, Licensee

¹³ I inadvertently failed to verify my Application for Review herein as required by 47 CFR , Chapter I, Subchapter A, Part 1, Subpart A, §1.52, and I therefore respectfully request that said Application be amended on its face to add this verification.

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 September 17, 2018 I served the foregoing Reply to the Enforcement Bureau's Opposition to my Application for Review electronically herein by attaching same to an email addressed to the correct email addresses for Rosemary C. Harold, Chief of the FCC's Enforcement Bureau, and for Pamela S. Kane, Esquire, who is the attorney representing the Enforcement Bureau herein.

On said date I also filed said Reply 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 "The Commission".

On said date I also filed a copy of said Reply 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 September 17, 2018 at Diamond Springs, California.

William F. Crowell

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