

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

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In the matter of )  
 )  
HERBERT L. SCHOENBOHM )  
Kingshill, Virgin Islands )  
 )  
For Amateur Station and )  
Operator Licenses )  
 )

WT Docket No. 95-11

TO: Administrative Law Judge  
Edward Luton

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
OF HERBERT L. SCHOENBOHM

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September 13, 1995

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(ii)

**Summary**

This proceeding involves an application for renewal of the amateur license held by Herbert L. Schoenbohm, KV4FZ. Mr. Schoenbohm was convicted of a felony, i.e., possession of certain telephone numbers which could be used to make long distance calls without paying for them. This was the only crime of which Mr. Schoenbohm was ever convicted in his entire life.

The record shows that Schoenbohm has had an exemplary amateur radio record and that he has been fully rehabilitated from his crime. Therefore, the single criminal conviction is no barrier to a renewal of Schoenbohm's license.

An issue was also added against Schoenbohm to determine whether he improperly solicited ex parte intervention in the renewal proceeding from elected officials. However, the record is bereft of any evidence that any ex parte communications were ever received on behalf of Schoenbohm. If a technical violation of the anti-solicitation rule occurred, it was the result of ignorance and is no barrier to the renewal of Schoenbohm's license.



whether Schoenbohm had been convicted of a felony of such magnitude as to require denial of the renewal application. On June 7, 1995, moreover, the Administrative Law Judge enlarged the issues in this proceeding to include an "ex parte" issue. The issues, as originally designated and enlarged are, therefore, as follows:

(a) To determine whether, in light of this conviction described in the Hearing Designation Order, Herbert L. Schoenbohm is qualified to renew his amateur service licenses.

(b) To determine whether Herbert L. Schoenbohm violated Section 1.1210 of the Commission's Rules, 47 C.F.R. §1.1210, by soliciting or encouraging others to make a presentation that he was prohibited from making.

(c) If it is determined that Herbert L. Schoenbohm did violate Section 1.1210 of the Commission's Rules, 47 C.F.R. §1.1210, to determine the effect of such a violation on his qualifications to renew his amateur service licenses.

(d) To determine, in light of the foregoing issues, whether granting Herbert L. Schoenbohm's application would serve the public interest, convenience and necessity.

2. A hearing on Mr. Schoenbohm's license renewal was held on August 8, 1995, before Edward Luton, the Administrative Law Judge, designated to preside in this proceeding. At the conclusion of the hearing, the Administrative Law Judge closed the record (Tr. 105)<sup>1</sup> and directed that proposed findings be filed by the parties

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<sup>1</sup>References to the transcript of the hearing proceeding will be designated "Tr.", followed by the appropriate page number. References to the exhibits of the WTB will be designated "WT", followed by the exhibit number. References to the exhibits of Schoenbohm will be designated "S.", followed by the appropriate exhibit number.

on or before September 15, 1995 (Tr. 106).

## II. FINDINGS OF FACT.

### A. Criminal Conviction.

1. Herbert Luther Schoenbohm was born November 10, 1939, at Fargo, North Dakota (Tr. 38). Until the year 1992, Schoenbohm had never been convicted of any crime other than parking tickets (Tr. 39).<sup>2</sup> In the year 1992, however, Schoenbohm was convicted of possessing a counterfeit telephone access device, i.e., he was convicted of having knowledge of certain telephone numbers that could be used to make long distance telephone calls without paying for them (Tr. 38; S. Ex. 1, pg. 1). His conviction stemmed from a dispute between Schoenbohm and a local retailer of long distance service (S. Ex. 7, pg. 2). He was not convicted of actually stealing money or accessing the account of any telephone subscriber, and he did not steal any money or cause the account of any subscriber to be debited. He was convicted of having knowledge in his mind of certain telephone codes that could be used to make long distance calls. These telephone codes were the "counterfeit access device" which he was convicted of possessing or using (S. Ex. 7, pg. 2). Subsequent to his conviction, he has not been convicted of any other crimes (Tr. 39).

2. While the conviction occurred in 1992, the events that resulted in the conviction occurred eight years prior to this FCC hearing, in 1987. Subsequently, Schoenbohm served the full two

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<sup>2</sup>Remarkably, Schoenbohm had not even been convicted of speeding (Tr. 39).

months of confinement to which he was sentenced and the two year period of probation (S. Ex. 1, pg. 1).

3. Schoenbohm suffered as a result of his conviction. From 1979-1992, he had been Chief of Communications for the Virgin Islands Police Department, a position which he enjoyed very much. As a result of his conviction, he lost that job; lost all of the retirement benefits associated with the job (amounting to at least \$150,000); and lost his health insurance. He was forced to make a living as a radio talk show host at a greatly reduced salary (S. Ex. 1, pg. 1). Also as a result of his conviction, he served two months of confinement and was on probation,<sup>3</sup> which limited his activities for two full years (S. Ex. 1, pg. 1).

4. Schoenbohm continues to contend that he was wrongfully convicted and he has filed an appeal to the Third Circuit Court of Appeals, contesting the denial of certain motions that sought to have his conviction vacated (S. Ex. 1, pg. 1). Because of the pendency of the appeal, Schoenbohm cannot express remorse for his crime, because doing so would jeopardize the appeal. Schoenbohm does, however, express remorse for the trouble which his conviction has caused to both the amateur community and the FCC (S. Ex. 1, pg. 1).

5. Schoenbohm has used his amateur radio license for good purposes. In March of 1978, FCC Commissioner Margita E. White appointed him Chairman of the State Emergency Communications

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<sup>3</sup>The word "parole" in ¶3 of Schoenbohm Exhibit 1 is an error; Schoenbohm was placed on probation. See the exhibits of the WTB.

Committee for the Virgin Islands, a post which he held until his conviction (S. Ex. 1A). On May 29, 1981, FCC Commissioner Joseph R. Fogarty sent Schoenbohm a Planning Award for the work which he did as Chairman of the State Emergency Communications Committee in setting up the plan for the Virgin Islands (S. Ex. 1B). On June 15, 1987, the FBI commended Schoenbohm for his assistance in apprehending one Eduardo Mena, a man who attempted to hijack a Virgin Islands seaplane to Cuba (S. Ex. 1C). In that connection, and at the request of the FBI, Schoenbohm used his amateur radio equipment in connection with the hijacking incident (S. Ex. 1, pg. 2). During the famous 1969 journey of Thor Heyerdahl across the Atlantic Ocean in the reed boat "Ra", Schoenbohm was in daily contact with the Ra and, when the boat finally had to be abandoned, Schoenbohm is the person who received the information by ham radio and succeeded in arranging for Heyerdahl's safe rescue at sea (S. Ex. 1, pg. 2). Under date of November 14, 1979, Schoenbohm received a commendation from the Government of the Virgin Islands for his service through ham radio in providing communications during the tropical storms (Hurricanes David and Frederick) (S. Ex. 1D). Schoenbohm also used his ham radio communications in an effort to save lives and property during Hurricane Hugo and, on December 14, 1989, he received a commendation for that work from the Virgin Islands Police Department (S. Ex. 1E). On October 12, 1992, the American Red Cross cited Schoenbohm for the work which he did through ham radio in providing communications during Hurricane Andrew (S. Ex. 1F).

6. Recently, Schoenbohm was appointed Director of Transportation under the Department of Property and Procurement of the Virgin Islands Government. This is a \$42,000 per annum appointment; it is a responsible position; and Schoenbohm contends that it demonstrates that he is continuing his rehabilitation from his earlier conviction (S. Ex. 2). In connection with his work as Director of Transportation, Schoenbohm has been entrusted by the Virgin Islands Government with the handling of money and other responsible matters, including large bids, proposals and setting of specifications, awarding contracts, and making arrangements for visiting dignitaries, governors, ambassadors, and premiers of other countries (Tr. 39). In his work, Schoenbohm supervises 20 people in the Transportation Division of Property and Procurement of the U.S. Virgin Islands Government (Tr. 40).

7. When Schoenbohm was hired to work for the Virgin Islands Government, he was interviewed for the position by Dr. Roy L. Schneider, the Governor of the Virgin Islands. At the time of the interview, Schoenbohm disclosed his criminal conviction to Governor Schneider, and the Governor was fully aware of the conviction. Nevertheless, the Governor hired Schoenbohm, anyway (Tr. 52).

8. Similarly, last June, Schoenbohm was appointed District Field Representative for Delegate Victor Frazer from the Virgin Islands. Delegate Frazer personally interviewed Schoenbohm for the job and Schoenbohm specifically disclosed his criminal conviction to the Delegate. Nevertheless, the Delegate hired him,

anyway (Tr. 52-3). While the position of District Field Representative is a part-time position, it is a paying job (Tr. 52-3).

**B. Ex Parte Issue.**

9. On April 3, 1995, an amateur named Hugh LeBlanc made a tape recording of certain remarks by Schoenbohm, broadcast over his amateur radio station, KV4FZ. In the tape recording, Schoenbohm discusses the apparatus used at his amateur station, including his 90 ft. tower, his antenna and tower, his propagation predictor program, etc. (S. Ex. 3, pg. 2). In addition, Schoenbohm is heard reading from portions of the Commission's amateur rules (S. Ex. 3, pp. 3-4).

10. Eventually, Schoenbohm discusses this proceeding, pertaining to the renewal of his amateur license. The following remarks take place and are set forth at page 6 of the transcript:

"Schoenbohm: Well, I'm not allowed, I'm not allowed under Ex-Parte Rules to ask for assistance of, with people in political positions but other people if they feel that government is overbearing or I'm being treated unfairly, have every right to point this out to their elected representatives. Congressional inquiries may indicate that these things will be conducted under the scrutiny of greater illumination but I am not permitted under ex-parte rules to engage in asking for assistance. We don't have Republican here but the person elected to Congress presently is from here. He is an independent. He is a wonderful person and I was very, very instrumental in getting him elected to Congress. If you [covered up by LeBlanc's remark]

LeBlanc: That's a bunch of bull.

Schoenbohm: . . . presently though, he is a

non-voting delegate. We don't have a vote except in committee and I just don't know what he could do in a situation like this but I am not permitted, I'm not permitted at this time because of ex-parte rules to make any requests of political intervention. Other people could do it if they are so disposed but I can't do it. Go Ahead.

LeBlanc: That's a lot of crap! [Covering up a portion of Schoenbohm]

Schoenbohm: It's in the Longworth building in Washington, D.C.

AB4PW: [Not heard on LeBlanc's tape]

Schoenbohm: Victor Frazer, F R A Z E R, Victor Frazer. His phone number is area code (202) 225-1700." (S. Ex. 3, pg. 6, lines 3-33)

11. As a result of these remarks by Schoenbohm, the WTB filed a petition to add an ex parte solicitation issue against Schoenbohm, and that issue was duly added by the ALJ. The complete transcript of the LeBlanc tape, received in evidence at the hearing, also contains the following remarks:

. . . "If you have observed KV4FZ operating his station in a manner that you think is beneficial to communications, emergency communications or during Hugo [Hurricane] or hurricane Andrew, Hurricane Frederick or Bob, I don't go back to [hurricane] David and hurricane Gilbert, the one in Jamaica. If you have any indication or observation that is something you could raise in a letter to someone else, if you have observed it, it may have an impact. I don't know if the other things will or will not, but you may ask. I think what you should do, if it were me I would ask the question of the gentleman that you plan to write whether or not he feels, he feels the cancellation or the refusal to renew the license of KV4FZ would have a negative impact on the communications readiness and preparedness. [covered up on tape by LeBlanc talking to himself]

LeBlanc: It will have absolutely no effect, whatsoever. He violated all the rules in the distress cases and everything else.

Schoenbohm: Whether or not to renew the license or the failure to renew the license would have a negative impact on the people of his constituency, that might make a difference, but I, it would depend on how things are crafted. AB4PW, KV4FZ

LeBlanc: Bull Crap. Writing letters in his favor. He accuses other people of writing letters like [garbled words] and they can't do nothing to him." (S. Ex. 3, pg. 8, line 49 - pg. 9, line 21)

12. At the hearing, Schoenbohm explained that he did not independently recall the conversation which formed the basis for the ex parte issue. Schoenbohm has, however, communicated with others who heard the conversation and, based upon their recollection, Schoenbohm is satisfied that he was requested to furnish Delegate Frazer's address by another radio amateur who had already decided to write Delegate Frazer a letter. This confirms Schoenbohm's prior recollection that he never requested anyone to write to the delegate or any other government official. Schoenbohm's testimony is backed up by the testimony of Malcolm B. Swan, a radio amateur from Mt. Pleasant, South Carolina, who submitted an affidavit dated July 6, 1995. In his affidavit, Mr. Swan affirmed that he recalled having a two-way conversation with Mr. Schoenbohm at 1207 UTC on 14313 MHz on April 3, 1995.<sup>4</sup> During this communication, Mr. Swan affirms that entirely of his own volition he asked Mr. Schoenbohm who represented the U.S. Virgin

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<sup>4</sup>The time and date were recorded in Swan's log (S. Ex. 5).

Islands and was told Mr. Victor Frazer. Swan affirms that he is the one who raised the subject; that at no time was Mr. Swan solicited by Schoenbohm to write or contact any member of Congress, nor did he (S. Ex. 5). Further corroboration of Mr. Schoenbohm's testimony is furnished by a stipulation entered into by the WTB on the day of the hearing that, in fact, the Commission never did receive any letters from elected officials on Mr. Schoenbohm's behalf (Tr. 34).

13. In his hearing testimony, Schoenbohm freely and voluntarily disclosed that when his renewal was first designated for hearing he had no knowledge of the ex parte rule and did not realize that it would be improper to request help from elected officials (S. Ex. 7, pg. 1). In fact, before Schoenbohm received from the Commission the Hearing Designation Order and shortly after, he did, in fact, write a number of letters to elected officials requesting assistance (S. Ex. 7, pg. 1).

14. In March, Schoenbohm contacted Attorney Lauren A. Colby to represent him in the renewal proceedings. Subsequent to his agreement to assist Schoenbohm, Mr. Colby explained the procedural rules regarding "ex parte" contacts. After that, Schoenbohm wrote no further letters to elected officials (S. Ex. 7, pg. 1).

15. Schoenbohm has always prided himself with his knowledge of FCC Rules and Regulations. He has always tried to abide strictly by those rules under Part 97, but was not familiar with other portions of the FCC Rules, e.g., the procedural rules

(Part 1). Schoenbohm frequently discusses the FCC Rules in his conversations with other ham operators. The remarks about the ex parte rule which he made and were taped by Mr. LeBlanc were intended to be an exposition of his newly acquired knowledge of the rules; nothing more (S. Ex. 7, pg. 1). Schoenbohm's testimony in this regard is backed up by the testimony of John Dellinger, a licensed radio amateur who has know Schoenbohm since 1988 or 1989, and has regularly communicated with Mr. Schoenbohm on the 20 meter ham band two to three times a week (Tr. 94-5). According to Mr. Dellinger, Schoenbohm extensively expounds on his knowledge of the FCC Rules (Tr. 95-6). Thus, when Dellinger heard Schoenbohm discussing the ex parte rule, he was not surprised because Schoenbohm frequently discusses the rules (Tr. 95-6).

16. Dellinger did not interpret Schoenbohm's remarks as an invitation for others to contact any political figures on Schoenbohm's behalf (S. Ex. 6, pg. 1). If, in fact, Dellinger has so interpreted Schoenbohm's remarks, Dellinger would have written his own letter to his own Congressman or Senator on Schoenbohm's behalf. Dellinger did not feel that it would be appropriate to write to Delegate Victor Frazer (S. Ex. 6).

### III. CONCLUSIONS.

#### A. Criminal Conviction.

1. Until 1986, the FCC took cognizance of all felony convictions of whatever kind in passing upon the character qualifications of an applicant for a construction permit or license. In that year, however, the Commission adopted a new

policy for broadcast applicants, declaring that felony convictions would be considered only if those convictions were "broadcast related". Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179 (1986); recon., 1 FCC Rcd 421 (1986); appeal dismissed sub nom., National Association for Better Broadcasting v. FCC, 86-1179 (D.C. Cir. 1987).

2. In 1990, the FCC modified its original Policy Regarding Character Qualifications in a number of respects. It adopted a rule (47 C.F.R. §1.17), requiring all licensees, broadcast and non-broadcast, to respond truthfully to Commission inquiries. Additionally, it drew a distinction between FCC-related misconduct and non-FCC-related conduct. Policy Regarding Character Qualifications in Broadcast Licensing, 5 FCC Rcd 3252 at ¶7 (1990). Thus, the Commission made it clear that, with respect to non-broadcast licensees, non-FCC related felony convictions and other non-FCC related misconduct, would be excluded from consideration in passing upon the qualifications of an applicant for a construction permit or a license. Additionally, at footnote 4 to its 1990 Policy Regarding Character Qualifications, the Commission set forth principles which would be applied in determining whether an applicant convicted of a felony would be considered to be rehabilitated. Footnote 4 reads as follows:

"Rehabilitation is generally a factor when misconduct occurred prior to the filing of the application in question. Whether an applicant has been rehabilitated will necessarily turn on the facts of each case. Among other factors, the Commission will consider: (1) whether the applicant has not been involved in any significant wrongdoing since the alleged

misconduct occurred; (2) how much time has elapsed since the misconduct; (3) the applicant's reputation for good character in the community; and (4) meaningful measures taken by the applicant to prevent the future occurrence of misconduct. RKO General, Inc., 5 FCC Rcd 642, 644 (1990). Further, where previous Commission consideration of the misconduct resulted in the denial of an application, the deterrent impact of our previous action may provide a basis for concluding that a recurrence of misconduct is unlikely. Id." 5 FCC Rcd at 3254.

3. Here, the conclusion is inescapable that Herbert L. Schoenbohm has had a good, if not outstanding, record as an amateur licensee. He has won awards for saving lives and property during the hurricanes which hit the Virgin Islands (F. 5). He was appointed by the FCC as the coordinator of the emergency communications plan for the Virgin Islands and received an award for his outstanding service (F. 5). He was active in communicating with the boat "Ra" during the famous voyage of Thor Heyerdahl across the Atlantic, and he was instrumental in bringing about a successful rescue when the boat was no longer able to continue (F. 5). Mr. Schoenbohm was also of assistance to the FBI and used his amateur radio equipment to assist the FBI in apprehending a hijacker (F. 5).

4. In 1992, Schoenbohm was convicted of the crime of possessing a counterfeit access device which could be used to make long distance telephone calls without paying for them (F. 1). However, the conduct which resulted in the conviction was remote in time, having occurred in 1987 (F. 2). Schoenbohm has paid his debt to society (F. 2-3), and he suffered the additional indignity and

financial loss of losing his job with the Virgin Islands Police Department (F. 3).

5. In assessing the impact of Mr. Schoenbohm's crime, it is first necessary to assess whether the crime was the type of "FCC-related" misconduct which the Commission regards as impacting unfavorably on a licensee's qualifications. Obviously, Mr. Schoenbohm did not use his amateur radio equipment to commit the crime. Schoenbohm did use the telephone to commit the crime, but many, many crimes involve use of the telephone, and users of the telephone are not required to be licensees of the FCC.

6. In Richard Richards, 1995 WL 170663 (Rev. Bd. 1995), the Review Board renewed the license of Richard Richards, the licensee of a low power television station in Sierra Vista, Arizona, notwithstanding the fact that Richards had been convicted of the felony of possessing with intent to distribute marijuana, and cultivating marijuana on federal property in violation of Title 21. U.S. Code, Sections 841(a)(1), 841(b)(1)(d), and 841 (b)(5), The Review Board found that when Richards was arrested he had two pagers in his car and a mobile telephone at his ranch, which were apparently used in his marijuana operations (Richards at ¶5). Nevertheless, the Review Board did not conclude that the crime was "FCC-related".

7. For the foregoing reasons, it is concluded that Schoenbohm's crime was not the kind of crime which is cognizable under current FCC policy and that, accordingly, Schoenbohm's conviction does not preclude the renewal of his license.

Furthermore, and entirely aside from the foregoing, the record shows that there are numerous mitigating factors which would require a renewal of the license, even if Schoenbohm's conviction was cognizable.

8. In the first place, Schoenbohm's conviction involved events which occurred approximately eight years ago. Thus, the events are remote in time. In Alessandro Broadcasting Co., 56 RR 2d 1568 (Rev. Bd. 1984), the Review Board granted a construction permit to an applicant, one of whose principals had committed second degree murder. In granting the application, the Review Board relied upon the fact that the second degree murder was "remote in time"; that the individual in question had paid his debt to society; and that he was rehabilitated. Here, as in Alessandro, the events leading to Schoenbohm's conviction were remote in time, and Schoenbohm has served his sentence (F. 2-3). As will be seen, he is also rehabilitated.

9. In Richards, cited supra, the Review Board renewed the license of an individual convicted of growing and distributing marijuana, where the individual explained that he had only grown sufficient marijuana for his own use and that he had been rehabilitated. Here, Schoenbohm has explained that his crime stemmed from a dispute with a local retailer of telephone service, and that he did not actually steal any money from anybody, nor debit the account of any legitimate telephone customer (F. 1). Thus, the un rebutted evidence shows that nobody, except Schoenbohm, actually suffered any financial loss as a result of the events that

led to Schoenbohm's conviction.

10. Schoenbohm also showed that he has been rehabilitated. Prior to his conviction he had never been convicted of any crime, except for parking tickets (F. 1). Subsequent to his conviction, he has not been convicted of any crimes, whatsoever (F. 1). He has now found responsible employment with the Virgin Islands Department of Transportation and, in that capacity, he supervises 20 people and is regularly entrusted with the handling of money, contracts, bids, and other matters which require the trust of his employer (F. 6). Additionally, he has obtained employment on a part-time basis with the delegate from the Virgin Islands to the U.S. Congress (F. 8). When Schoenbohm obtained his current employment with the Virgin Islands Department of Transportation, he was interviewed by the Governor; he fully disclosed his conviction to the Governor; but was hired anyway (F. 7). Similarly, when Delegate Frazer made Schoenbohm a paid, part-time member of Frazer's staff, Schoenbohm fully disclosed his conviction to the Delegate, but was hired anyway (F. 8). These things show that Schoenbohm enjoys a good reputation amongst responsible persons in the Virgin Islands community. They demonstrate the extent of his rehabilitation.

11. It is concluded, therefore, that in light of his otherwise spotless record, both before and after his single conviction, and in light of his evident full rehabilitation, the single conviction which forms the basis of this proceeding is no barrier to a grant of renewal of Schoenbohm's amateur license.

**B. Ex Parte Issue.**

12. The record shows that Schoenbohm prides himself on his knowledge of the FCC's Rules (F. 15). Indeed, in the tape recording which formed the basis for the ex parte issue, Schoenbohm read extensive excerpts from the rules (F. 9). John Dellinger, a man who has known Schoenbohm for many years, corroborated Schoenbohm's testimony that he prides himself on the knowledge of the FCC's Rules and would never knowingly violate a rule (F. 15).

13. In this case, Schoenbohm did, in fact, arguably violate Section 1.1210 of the Commission's Rules, which states that "no person shall solicit or encourage others to make any presentation which he or she is prohibited from making under the provisions of this subpart." At testimony given at the hearing, Schoenbohm voluntarily and candidly disclosed that when his renewal was first designated for hearing he wrote to elected officials seeking assistance with his case. He did this, because he had no knowledge of the Commission's ex parte rules (F. 13).

14. On the other hand, the question of whether Schoenbohm's remarks taped by Mr. LeBlanc violated the anti-solicitation rule is a matter of interpretation. At no time during the taped remarks did Schoenbohm actually request anybody to write a letter to any elected official or to the FCC concerning the renewal application. The most that can be said is that Schoenbohm discussed letters which other people may have already decided to write. Nevertheless, for purposes of these conclusions, it will be assumed, solely arguendo, that Schoenbohm's remarks constituted a

technical violation of the anti-solicitation rule. That violation, of course, occurred because Schoenbohm was entirely ignorant of the existence of the anti-solicitation rule (F. 13). There is no testimony to the contrary, and the record shows that Schoenbohm is, in fact, pre-occupied with the Commission's Rules and with complying with those rules (F. 15).

15. What we have, therefore, is an innocent, technical violation of the anti-solicitation rule resulting from ignorance. In a key case dealing with the ex parte rules, the Review Board remarked that "it is not necessary to show that an applicant knew it was violating the rules when the letters were written, because it is charged with knowing of the rules and lack of knowledge will not entirely excuse the violations." Pepper Schultz, 4 FCC Rcd 6393 (Rev. Bd. 1989) at ¶37. Emphasis supplied. The Review Board pointed out, however, that "unfamiliarity with the Commission's Rules mitigates the inference of a culpable intent." Pepper Schultz at ¶39, citing Charles R. Lutz, 56 FCC 2d 385 (1975).

16. In Pepper Schultz the Review Board was dealing with a situation where an applicant did, in fact, request a U.S. Senator to intervene in a comparative broadcast proceeding and the Senator's office did, in fact, write the ALJ who was presiding in that proceeding. In Schoenbohm's case, of course, no improper ex parte contact was ever made; no letters from elected officials were ever received by the FCC in support of Schoenbohm's renewal application (F. 12). Thus, the situation here is far less serious than the situation in Pepper Schultz.

17. In Pepper Schultz, even though two improper ex parte communications had taken place, the Review Board declined to disqualify the offending applicant. Moreover, it declined to disqualify that applicant, even though the Review Board found that the applicant "engaged in the solicitation of an ex parte presentation in circumstances that strongly suggest that its behavior was not entirely innocent or unintentional." Pepper Schultz, ¶41. Here, of course, the unrebutted evidence makes it very clear that Schoenbohm was completely ignorant of the anti-solicitation aspects of the ex parte rule.

18. In Pepper Schultz the Board commented that:

"The Commission, and hence the Board, have held that where an ex parte violation is a single incident, and not repeated, no severe sanction will follow. Smaller Market UHF TV Stations Group, 81 FCC 2d 429, 439-440 (1980); Blue Ribbon Broadcasting, Inc., 90 FCC 2d 1023, 1027-1028 (Rev. Bd. 1982); Harold James Sharp, supra, at 709. In this regard, while Comstock's letter to Senator Hecht resulted in a second letter being sent to the ALJ, there was essentially only one transaction involving a solicitation of assistance from a single Senatorial office. By contrast, for example, in Voice of Reason, supra, the applicant's disqualification under the ex parte issue was based on a solicitation sent to thousands of persons on his mailing list. Similarly, in Desert Empire Television Corp., supra, the Commission imposed only a modest monetary forfeiture where a licensee engaged in wilful ex parte communications on at least three separate occasions and where the violation was repeated after warning, and even after having been informed specifically concerning the Commission's ex parte rules. And, in our most recent decision in this area, Stearns County Broadcasting Co., supra, where the applicant made numerous oral and written solicitations of ex parte assistance from her two United States Senators and her Congressional

Representative, leading the Board to conclude that the rule violations were wilful and repeated, the applicant was not disqualified." Pepper Schultz at 6403. Footnotes omitted.

Thus, even though there were two actual improper letters from a U.S. Senator to the presiding ALJ in the Pepper Schultz proceeding, the Review Board stopped short of disqualifying the applicant who solicited those letters. The Board considered those letters to be a single transaction and drew a distinction between that transaction and another case (Voice of Reason, Inc., 37 FCC 2d 686 (Rev. Bd. 1972)), where ex parte solicitations were sent to thousands of persons on a mailing list.

19. In the case at bar, there were no improper ex parte communications on the part of any elected official or any other person in support of Schoenbohm's renewal application.

20. Any technical violation of the anti-solicitation provision that occurred was simply the result of Schoenbohm's total ignorance of the anti-solicitation requirement, and the record is utterly devoid of any evidence showing any violation of that requirement by Schoenbohm after he learned of its existence. If a technical violation of the anti-solicitation rule did, in fact, occur, it was totally harmless, because no improper ex parte communications ever took place. Under these circumstances, it is clear that Schoenbohm has satisfied his burden under the ex parte issue. Pepper Schultz, cited supra, and the cases cited therein.

#### IV. ULTIMATE CONCLUSIONS.

For the reasons set forth above, it is concluded that Herbert L. Schoenbohm has satisfied his burden under the issues

specified against him in this proceeding, and that a grant of his application for renewal of license will serve the public interest, convenience and necessity. Accordingly, the application of Herbert L. Schoenbohm for renewal of amateur license KV4FZ is HEREBY GRANTED.

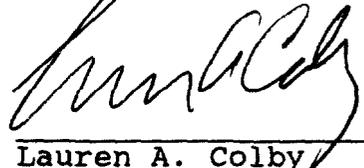
September 13, 1995

Law Office of  
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10 E. Fourth Street  
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Frederick, MD 21705-0113

Respectfully submitted,

HERBERT L. SCHOENBOHM

By:

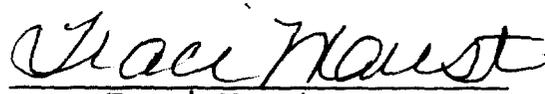
  
\_\_\_\_\_  
Lauren A. Colby  
His Attorney

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 13<sup>th</sup> day of September, 1995:

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