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

DISPATCHED BY

In the Matter of the Application of)	WT DOCKET NO. 95-11
)	
HERBERT L. SCHOENBOHM)	
Kingshill, Virgin Islands)	
)	
For Amateur Station and)	
Operator Licenses)	

Appearances

Thomas D. Fitz-Gibbon, Esq. and Terrence E. Reidler, Esq. on behalf of the Wireless Telecommunications Bureau; and Lauren A. Colby, Esq. on behalf of Herbert L. Schoenbohm.

SUPPLEMENTAL INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE EDWARD LUTON

Adopted: September 30, 1997 ; Released: October 9, 1997

I. Preliminary Statement

1. On February 2, 1994, Herbert L. Schoenbohm ("Schoenbohm") applied for renewal of his amateur station (KV4FZ) and operator licenses. Those licenses were originally scheduled to expire on March 2, 1994, but their term has been extended pursuant to Section 1.62 (a) of the Commission's Rules, 47 C.F.R. § 1.62 (a), until the disposition of Schoenbohm's application.

2. On February 6, 1995, the Bureau, under delegated authority, adopted an Order designating Schoenbohm's application for hearing. Herbert L. Schoenbohm, 10 FCC Rcd 1669 (1995). Schoenbohm filed a timely appearance. The issues, as specified prior to the first hearing, are:

- (a) To determine whether, in light of the 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.

3. The Presiding Judge denied Schoenbohm's renewal application in his Initial Decision released on February 2, 1996. Herbert L. Schoenbohm, 11 FCC Rcd 1146 (1996). Schoenbohm filed exceptions to the Initial Decision. The General Counsel, in his Memorandum Opinion and Order, Herbert L.

Schoenbohm, 11 FCC Rcd 12537 (1996), released September 27, 1996, remanded this proceeding for the taking of evidence on the following additional issues:

- (c) (1) To determine whether Herbert L. Schoenbohm made misrepresentations or lacked candor in his testimony about his felony conviction, loss of pension rights, and ex parte communications.
- (c) (2) To determine if Herbert L. Schoenbohm used his amateur radio facilities for communications about how to obtain illicit access codes.

II. Findings of Fact Conviction

4. In *Government v. Schoenbohm*, No. Crim: 1991/01/09 (D.V.I. December 30, 1992), Mr. Schoenbohm was convicted in the U.S. District Court for the District of the Virgin Islands (District Court) of violating 18 U.S.C. § 1029 (a)(1). The statute provides:

whoever --

knowingly and with intent to defraud produces, uses or traffics in one or more counterfeit access devices:

... shall, if the offense affects interstate or foreign commerce, be punished ...

5. The statute defines the relevant terms:

(1) The term "access device" means any card, plate, code, account number or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

(2) The term "counterfeit access device" means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

(3) The term "unauthorized access device" means any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud;

(4) The term "produce" includes design, alter, authenticate, duplicate, or assemble;

(5) The term "traffic" means transfer, or otherwise dispose of, to another, or obtain control with intent to transfer or dispose of; ... 18 U.S.C. § 1029(e).

6. The District Court sentenced Mr. Schoenbohm to imprisonment for a term of two months. The Court suspended execution of this sentence and placed Schoenbohm under house arrest for two months with two years probation. The District Court also required Mr. Schoenbohm to pay a fine of \$5,000.00 during the period of probation. Schoenbohm began serving his sentence on January 11, 1993. (Bureau Ex. 1.)

7. On appeal, the U.S. Court of Appeals for the Third Circuit affirmed Schoenbohm's conviction: "We . . . affirm appellant's conviction under 18 U.S.C. § 1029(a)(1) -- use of a counterfeit access device." *United States v. Schoenbohm*, No. 93-7516 (Third Circuit July 22, 1994). Schoenbohm's petition for rehearing was denied on November 2, 1994. *United States v. Schoenbohm*, No. 93-7516 (Third Circuit July 22, 1994).

8. In affirming Schoenbohm's felony conviction, the Court of Appeals reviewed evidence which showed that between 1982 and 1989, Caribbean Automated Long Line Services ("CALLS") provided long distance telephone service to customers in the Virgin Islands. Fraud was a major problem for CALLS--illicitly obtained access codes were used to procure telephone service. To stem its losses, CALLS began an investigation which identified Herbert L. Schoenbohm as a possible user of illicitly-obtained access codes. At trial, two witnesses testified that Schoenbohm telephoned them at about the same time that records show calls being placed to their numbers with illicit codes. Five other witnesses to whom calls were placed with illicit codes testified that Mr. Schoenbohm was the only person in the Virgin Islands who ever telephoned them.

9. Mr. Schoenbohm was convicted of the crime of fraudulent use of a counterfeit access device. In his first written declaration (dated May 23, 1995) submitted in this proceeding, Schoenbohm's characterization of his conviction is essentially accurate: "I was convicted for defrauding a telephone resale service provider by . . . making unauthorized long distance calls." (Schoenbohm Ex. 1) In a later written declaration (dated July 18, 1995), however, Mr. Schoenbohm described his conviction as follows: "I was convicted solely of having knowledge in my mind of certain telephone codes of which 4 of the 6 digits were similar to those that could be used to make long distance calls without paying for them. These telephone numbers were the 'Counterfeit Access Device' which I was convicted of possessing or using." (Schoenbohm Ex. 7) This theme, that Schoenbohm was not convicted because he performed any act, was continued upon direct examination at the hearing with Mr. Schoenbohm offering this description of his conviction:

Q. Now, you have been convicted, have you not, of the crime of possessing a counterfeit telephone access device?

A. That's correct.

Q. And what was the device that you were convicted of possessing?

A. It was never described fully in the court, but believed to be numbers in my mind.

Q. In other words, numbers that could be used to make long-distance telephone calls?

A. That's correct.

Q. -without paying for them? Is that right?

A. Correct. (Tr. 38.)

10. In the Initial Decision, Schoenbohm's altered testimony was found to be a deliberate effort by him to mislead the trier of fact. The testimony sought to portray a softened, more benign image of the facts underlying Schoenbohm's criminal conviction and was false:

"Contrary to his claim, Schoenbohm was not convicted 'solely of having knowledge in [his] mind of certain telephone codes . . . which . . . were similar to those that could be used to make long distance calls without paying for them.' Schoenbohm was actually convicted for the fraudulent use of counterfeit access codes."

11. After this case was remanded, Mr. Schoenbohm sometimes insisted that he "was convicted solely of having knowledge in my mind of certain access codes . . ." (Tr. 44). Contradictorily, however, Schoenbohm also testified that his felony conviction rested upon specific actions taken by him, i.e., "on me making phone calls." (Tr. 44).

Even that testimony, however, was followed by the claim that Schoenbohm was convicted "of having knowledge of certain numbers that could be used to make long distance calls without paying for them." (Tr. 56).

12. Mr. Schoenbohm explained his earlier testimony in the following manner:

"In my testimony at the prior hearing, I responded to a question from my attorney which inquired, in substance, as to the nature of the counterfeit access devices, which were in my possession. My attorney asked that question because, prior to the hearing, I specifically asked him to make it clear that I did not possess or use any mechanical, electromechanical, or magnetic access devices; that the only devices I had were telephone numbers in my mind." (Schoenbohm Ex. 8)

13. Schoenbohm gave a number of other explanation for his references to "possession." Schoenbohm testified:

"It was mentioned to -- to set apart from the actual manufacture and trafficking portions of the statute and the supposed relation to electronic means of producing something or trafficking of something which I think is what the statute -- really speaks to." (Tr. 63).

"All right. The description in here was to set it apart from the conviction of actually stealing money or accessing the account of any telephone subscriber. And I did not steal any money or cause the account of any subscriber to be debited. It was a description of - - you say softer, more benign. I don't believe it's -- a conviction is a conviction. It's serious enough standing by itself. (Tr. 13).

"I could explain something here, Mr. -- Judge Luton, that possession was one of the counts for which I was convicted." (Tr. 64).

"What I can tell you is that it was not -- it was only used in an explanation of what the device was. And it certainly -- I can understand your concern. But I think I made it sufficiently clear throughout the testimony and submissions that I was convicted for use of a counterfeit access device. But what was that counterfeit access device? There's a lot of speculation of what it was. And I think that was my attempt to explain that these were numbers in my mind that were used. (Tr. 66).

14. Ultimately, Schoenbohm agreed that the notion of "possession," as advanced by him, clarifies nothing relevant to this case. (Tr. 66).

Loss of Pension Rights

15. Schoenbohm was employed from 1979 to until 1992 -- with a one year break in 1985 -- as Chief of Communications for the Virgin Islands police department (Schoenbohm Exhibit 1, p. 1; Tr. 57-58; Tr. 70-71). He was fired from this position following his conviction (Tr. 71). At the time of his termination his annual salary was \$35,000 (Tr. 71). The Government of the Virgin Islands subsequently rehired Schoenbohm as Director of Transportation for the Virgin Islands Government under the Department of Property and Procurement (Schoenbohm Exhibit 2). Schoenbohm is currently employed in that position with an annual salary of \$42,500 (Tr. 72).

16. Schoenbohm testified at the first hearing that he suffered immensely as a result of his conviction, losing his job, future retirement benefits worth at least \$150,000, and health care benefits in addition to serving two months of confinement and two years of probation (Schoenbohm Exhibit 1, p. 1). When asked at the first hearing whether Schoenbohm Exhibit 1, which contains this direct written testimony, was true and correct, Schoenbohm testified, "Yes, it is" and did not offer any corrections. (Tr. 43)

17. However, at the remand hearing, Schoenbohm admitted that his pension rights had been restored at the time of the first hearing in this proceeding as a result of his reemployment by the Virgin Islands Government (Tr. 73-74; Schoenbohm Exhibit 8, p.2). Schoenbohm asserts, however, that even though he eventually regained his pension rights, he suffered the loss of his pension rights during the period between his being fired by the Virgin Islands Government and his being rehired (Schoenbohm Exhibit 8, p. 1).

Ex Parte Communications

18. The parties stipulated that Schoenbohm Exhibit 3 is an essentially accurate transcription of a tape recording made by Mr. Hugh J. LeBlanc ("Le Blanc") at about 8:30 a.m. on April 3, 1995 (Tr. 32-34). The transcription indicates that Schoenbohm made amateur radio transmissions on the frequency 14.313 mhz concerning a number of subjects. In particular, Schoenbohm made the following transmissions:

Well, I'm not allowed, I'm not allowed under the 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 permittee under ex parte rules to engage in asking for assistance. We don't have a 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 LeBlanc's remark] - - - presently though, he is a nonvoting 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 for political intervention. Other people could do it if they're so disposed but I can't do it. Go ahead. [covered up by LeBlanc's remark] . . . It's in the Longworth Building in Washington, D.C. [Amateur Station AB4PW not heard on LeBlanc's tape.]

Victor Frazer, F-R-A-Z-E-R, Victor Frazer. His phone number is area code 202-225-1700. [conversation continues] Getting back to the other thing. I think that there is one thing that can be established. If you have observed KV4FZZ operating his station in a manner that you think is beneficial to communications, emergency communications, or during

Hugo [Hurricane], or Hurricane Andrew, or 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 any observation, that is something you can raise in a letter to someone else if you 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 by LeBlanc talking to himself] 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. (Schoenbohm Exhibit 3, pp. 6-9)

19. At the first hearing Schoenbohm claimed that he had no knowledge of the Commission's ex parte rules when this case was first designated for hearing and that he did not realize that soliciting help from elected officials might be improper. Therefore, " . . . before I received from the Commission the hearing designation order, and shortly thereafter, I did in fact, write a number of letters to elected officials requesting assistance." (Schoenbohm Exhibit 7, p. 1) Schoenbohm declared further that his remarks on April 3, 1995 (set out above) were nothing more than an exposition of his newly acquired knowledge concerning the ex parte rules (Schoenbohm Exhibit 7, p. 1). Mr. Malcolm B. Swan ("Swan"), a licensed amateur, submitted an affidavit on Schoenbohm's behalf. Swan stated that, during a two-way, single side band conversation he had with Schoenbohm on April 3, 1995, he asked Schoenbohm for the name of the person who represented the Virgin Islands and that Schoenbohm provided Delegate Frazer's name (Schoenbohm Exhibit 5). Swan stated that, at no time, was he requested to solicit or contact any member of Congress on Schoenbohm's behalf (Schoenbohm Exhibit 5).

20. At the remand hearing, Schoenbohm repeated his earlier claim that, during his two-way radio conversation with Swan on April 3, 1995, he (Schoenbohm) was expounding on his "newly discovered knowledge of the ex parte rules." (Schoenbohm Exhibit 8, p. 3) He further testified that he told Swan he "could not write to politicians or people at the FCC without violating the rules, but that others could do so. I told him that I hoped that if others did, in fact, write, they would include certain information in their letters. However, I did not ask him to write anybody, and he did not, in fact, write anybody." (Schoenbohm Exhibit 8, p. 3) In addition, Schoenbohm testified that: ". . . I did not at the time know that the ex parte rule prevented me from encouraging other people to write to politicians on my behalf. If I had known that portion of the rule, I would not have said what I said to Swan, lest it be misinterpreted as a solicitation." (Schoenbohm Exhibit 8, p. 3). At the remand hearing, Schoenbohm further contended that the language on which the ex parte issue is based was simply a "poor choice of words." (Tr. 107). Schoenbohm claimed that Swan asked him how to seek assistance when one has a grievance with the government (Tr. 99) and that, in responding to this query, he used his own situation to illustrate the format for communicating with a congressman (Tr. 95, 103, 108). He said that he used himself as an example because "that is just my style." (Tr. 108) Schoenbohm testified that he did not know whether Swan actually had any grievance.

21. The transcription of Schoenbohm's conversation with Swan on April 3, 1995, contains nothing indicating that Schoenbohm was using his own situation to illustrate the format for contacting a congressman (Schoenbohm Exhibit 3). The portion of the transcription leading up to the conversation on which the ex parte issue is based includes discussion concerning the Commission's Rules, government policies and this proceeding. It does not, however, include any statement indicating that Schoenbohm is going to demonstrate how to contact a congressman (Schoenbohm Exhibit 3, p. 3, line 41-p.5, line 51).

Illicit Access Codes

22. In its summary of the evidence against Schoenbohm in the criminal trial, the Court of Appeals noted that a witness in the case "testified that he heard Schoenbohm broadcast on ham radio about how to obtain illicit access codes." The conversation in question is set out in Joint Exhibit 1 and it involved Schoenbohm and two other amateurs, Dan Worely and Tony Benvenuti.

23. According to Schoenbohm, sometime in 1987, or thereabouts, he noticed that some businesses in Tortola in the British Virgin Islands were advertising local telephone numbers in the U.S. Virgin Islands. Schoenbohm knew that a gentleman named Ackley had a so-called "YB System" which could be used to illegally transmit signals between the U.S. and British Virgin Islands and to enable merchants in the British Virgin Islands to be reached by calling a local number in the U.S. Virgin Islands. Schoenbohm made inquiry of the telephone company in the U.S. Virgin Islands and learned that a block of telephone numbers had been assigned to Mr. Ackley. These telephone numbers were local calls within the U.S. Virgin Islands.

24. Schoenbohm began calling these numbers and listening on frequencies licensed to Ackley to determine whether a call to these numbers would activate Ackley's transmitters. During one of these conversations, Schoenbohm called several of these telephone numbers. His purpose in doing so is stated by him as follows:

" . . . I called a number of these telephone numbers for the purpose of demonstrating to other amateurs that calling these numbers would, in fact, activate transmitters owned by Ackley or his company. I did this to encourage the other amateurs to pursue Ackley's illegal operations and to assist me in closing down these illegal operations. I also wrote a letter to Riley Hollingsworth at the FCC, specifically complaining about these illegal operations." (Schoenbohm Ex. 9).

III. Conclusions of Law

25. Issue c (1) seeks to determine whether Schoenbohm made misrepresentations or lacked candor in his testimony about his felony conviction, loss of pension rights, and ex parte rules.

Conviction

26. In his initial testimony at the first hearing, Schoenbohm was straightforward: "I was convicted for defrauding a telephone resale service provider by . . . making unauthorized long distance calls." Later, however, Schoenbohm altered his first testimony to cast his conviction in a different light. He described his conviction as follows:

" . . . I did not steal any money or cause the account of any telephone subscriber to be debited. I was convicted solely of having knowledge in my mind of certain telephone access codes of which 4 of the 6 digits were said to be similar to those that could be used to make long distance calls without paying for them. These telephone numbers were the "Counterfeit Access Device" which I was convicted of possessing or using.

Additionally, Schoenbohm described his conviction as being based on possession rather than on the performance of any act:

Q: Now you have been convicted, have you not, of the crime of possessing a counterfeit telephone access device?

A: That's correct.

Q: And what was that device you were convicted of possessing?

A: It was never fully described in court but believed to be numbers in my mind.

Q: In other words, numbers that could be used to make long-distance telephone calls?

A: That's correct.

Q: -- without paying for them? Is that correct.

A: Correct.

27. This proceeding was remanded, in part, to give Schoenbohm an opportunity to explain this mischaracterization of his conviction. At the remand hearing he repeatedly used the term "possession" or "possessing" in describing his conviction. In addition, Schoenbohm testified that he was "convicted solely of having knowledge in my mind of certain access codes . . ." and that he was convicted of "having knowledge of certain numbers that could be used for making long distance calls without paying for them."

28. Schoenbohm's explanations for his emphasis on "possession" are difficult to follow but his main points appear to be that he wanted to make it clear that his conviction did not result from the use of a physical counterfeit access device and that he was not convicted of stealing money from subscribers. Schoenbohm believes this was a "legitimate distinction" to make because the use of such mechanical devices would make his crime "much more serious." Schoenbohm gave no reasons for that bare conclusion. These "explanations" are illogical because Schoenbohm could have easily made both points without reference to "possession" -- simply by saying that his conviction involved neither a physical counterfeit access device nor theft from subscribers. Following his "explanations," Schoenbohm agreed that use of the word "possession" clarified nothing about this case.

29. The Presiding Judge remains persuaded that misdescribing his conviction was a conscious effort to influence and mislead the trier of fact. The testimony was an attempt to portray a softened, more benign, image of the facts underlying Schoenbohm's felony conviction and was false. Contrary to his claims, Schoenbohm was actually convicted for the fraudulent use of access codes. Schoenbohm misrepresented a material fact to the Commission and was lacking in candor.

Loss of Pension Rights

30. At the first hearing in this proceeding, Schoenbohm orally testified that he did not know whether his firing from the police department had worked a forfeiture of his pension benefits (Tr. 68). At the same time, however, Schoenbohm claimed in his written testimony that the firing cost him "all of the retirement benefits associated with the job (amounting to at least \$150,000)." (Schoenbohm Ex. 1). By the time of the first hearing when this testimony was received, Schoenbohm had been rehired by the

Virgin Islands Government and his pension benefits had been restored (Tr. 73). Schoenbohm was straightforward about this at the hearing following remand of this case. He testified that he now knew that his pension benefits had in fact been lost when he was fired (Tr. 71), and that those benefits had been restored when he was rehired. (Schoenbohm Ex. 8). Although the matter is not altogether free from some doubt, Schoenbohm's oral testimony at the first hearing is taken by the Presiding Judge as modifying his inconsistent written testimony, and no misrepresentation or lack of candor will be found on these facts.

Ex Parte Communications

31. Section 1.1210 of the Commissions Rules, 47 C.F.R. § 1.1210, states, in pertinent part, as follows: "... 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."

32. Schoenbohm Exhibit 3 shows that Schoenbohm did solicit others to make prohibited ex parte presentations in his behalf in this proceeding. Schoenbohm's claim -- which he made at the first hearing and reiterated at the remand hearing -- that he did not intend to solicit others to make ex parte presentations in his behalf is contradicted by the plain meaning of his words. Schoenbohm told his listeners that he is not permitted to make any requests for "political intervention" in this matter but other people can do so. He then provided the name, address and telephone number of Congressional Delegate Victor Frazer. Schoenbohm went on to make specific suggestions about the content of letters written to congressmen in his behalf -- such as providing information concerning Schoenbohm's participation in emergency communications, and asking the congressmen whether the nonrenewal of Schoenbohm's amateur licenses would have any negative impact on their constituents. Finally, the clear implication of Schoenbohm's claim to have been instrumental in Delegate Frazer's election is that Delegate Frazer is indebted to him and, therefore, would be inclined to assist him.

33. Swan claimed that he asked Schoenbohm for the name of the person who represented the Virgin Islands and that, in response, Schoenbohm provided Delegate Frazer's name. Even if this claim is true, it is clear that Schoenbohm was encouraging Swan and any others who were listening to solicit ex parte presentations on his behalf.

34. At the hearing on remand, Schoenbohm reiterated the claim made during the first hearing, namely, that he was simply expounding on his "newly acquired knowledge of the ex parte rules" -- a claim which is unsupported by the evidence. In subsequent testimony at the remand hearing, however, Schoenbohm put forth an entirely new claim: that during the conversation giving rise to the ex parte issue, he was using his own circumstances to illustrate the "format" for contacting a congressman. If Schoenbohm was in fact using his own situation to demonstrate how to contact a congressman, this should have been evident either from an explicit reference or from context. There is nothing in the transcription of Schoenbohm's communications -- either in the portion which gave rise to the ex parte issue or in the long discussion leading up to it -- indicating that Schoenbohm was using his own circumstances to demonstrate how to contact a congressman.

35. Schoenbohm admitted that shortly before and shortly after this case was designated for hearing, he wrote a number of letters to elected officials seeking their assistance. He claimed that at those times he was unfamiliar with the Commission's ex parte rules and did not realize that it would be improper for him to request help from elected officials with his case. Schoenbohm claimed that, after retaining an attorney in March 1995 who explained the ex parte rules to him, he ceased writing letters to elected officials seeking their assistance. However, Schoenbohm now claims that he did not understand that the ex parte rules prohibit him from encouraging others to write politicians in his behalf. This is unconvincing. The prohibitions of the ex parte rules had been explained to Schoenbohm prior to his April

3, 1995 remarks. Schoenbohm either knew or should have known that his April 3, 1995 remarks were in violation of the ex parte rules. It is concluded that Schoenbohm did solicit others to make presentations that he was prohibited from making. By claiming that he did not do so, he misrepresented a material fact to the Commission and was lacking in candor.

Illicit Access Codes

36. Issue c (2) seeks to determine whether Schoenbohm used his amateur radio facilities for communications about how to obtain illicit access codes.

37. The record discloses that the conversation in question had nothing to do with illicit or unauthorized access codes. What appears to have happened is that Schoenbohm had noticed that some businesses in Tortola in the Virgin Island were advertising that they had local telephone numbers in the U.S. Virgin Islands. Schoenbohm suspected that a gentleman by the name of Ackley was providing these telephone numbers to the Tortola businesses. Ackley had a so-called "YB system", which could be used illegally to transmit signals between the U.S. Virgin Islands and the British Virgin Islands, and to enable merchants in the British Virgin Islands to be reached by calling a local number in the U.S. Virgin Islands.

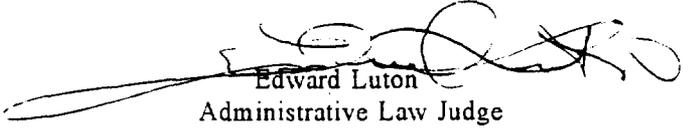
38. During a conversation with two other radio amateurs, Schoenbohm sought to demonstrate that Ackley's YB system was being used for illegal purposes (F.11-13). During the conversation, Schoenbohm called a number of these telephone numbers, while listening to the frequencies licensed to Ackley to determine whether calling these numbers would activate Ackley's transmitters. Schoenbohm demonstrated that, in fact, these calls did activate Mr. Ackley's transmitters. Schoenbohm did this to encourage the other amateurs to pursue Ackley's illegal operations. Schoenbohm also wrote a letter to Riley Hollingsworth at the FCC, specifically complaining about these illegal operations.

39. Thus, the conversation which was the subject of Issue (c) (2) had absolutely nothing to do with "illicit access codes." The discussion related entirely to ordinary telephone numbers publicly available in published advertisements or known to be part of a block of numbers which had been assigned to Ackley. Schoenbohm committed no wrongdoing in calling these numbers and nothing indicates that he obtained these numbers by any improper means. This issue is resolved in Schoenbohm's favor.

IV. Ultimate Conclusions

40. Schoenbohm made misrepresentations or lacked candor in his testimony about his felony conviction and ex parte communications. In light of those conclusions, and the conclusions heretofore reached in this case (Initial Decision, 11 FCC Rcd. 1146 (1996)), IT IS ORDERED THAT Herbert L. Schoenbohm's Application to Renew his amateur service license IS DENIED. ^{1/}

FEDERAL COMMUNICATIONS COMMISSION



Edward Luton

Administrative Law Judge

^{1/} In the event exceptions are not filed within thirty (30) days after the release of this Supplemental Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective fifty (50) days after its release pursuant to Section 1.276 (d) of the Commission's Rules.