

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

RECEIVED
AUG 21 1998
FCC MAIL ROOM

In the matter of)
)
HERBERT L. SCHOENBOHM) WT Docket No. 95-11
Kingshill, Virgin Islands)
)
For Amateur Station and)
Operator Licenses)
)
TO: The Full Commission

**REPLY TO WIRELESS TELECOMMUNICATIONS BUREAU'S
OPPOSITION TO PETITION FOR RECONSIDERATION**

Herbert L. Schoenbohm ("Schoenbohm"), by his attorney, hereby respectfully replies to the "Wireless Telecommunications Bureau's Opposition to Petition for Reconsideration", filed in this proceeding on August 19, 1998, by the FCC's Wireless Telecommunications Bureau ("WTB"). In reply thereto, it is shown:

1. In its Opposition, the WTB complains that Schoenbohm did not earlier bring to the Commission's attention the evidence which he proposed, suggesting that there may have been improper ex parte contacts with the Judge in this proceeding. There were two reasons for this: (a) Schoenbohm was attempting unsuccessfully to obtain additional evidence of these ex parte contacts; and (b) Schoenbohm harbored the hope that the Commission would overturn the Judge's ruling and renew his amateur license. After all, neither the Judge nor the full Commission actually found any instances in which Schoenbohm testified to anything that was not true. The full Commission's

No. of Copies rec'd 0+16
FACODE

decision, like the Judge's decision, was predicated upon a strained interpretation of the record, designed to construct "lack of candor" out of testimony which, standing by itself, contained no statements which were not completely truthful.

2. The problem here is that Schoenbohm lacks the tools to investigate the possibility strongly suggested in the tape recording attached to Schoenbohm's petition that Schoenbohm's detractors communicated with the Judge. If such communications did, in fact, take place, they would have completely tainted this proceeding.

3. In Press Broadcasting Co., Inc. v. FCC, 59 F.3d 1365 (D.C. Cir. 1995), the Court of Appeals reversed the Commission's grant of an extension of a TV construction permit, because the proceeding had been tainted by improper ex parte presentations. Thereafter, the Commission's Inspector General conducted a full investigation of the ex parte contacts and a hearing was actually held pertaining to those contacts. After the completion of the hearing proceedings, and upon a full factual record, the Commission determined that the ex parte contacts did not taint the proceeding and affirmed its grant of the construction permit, although it strongly admonished those involved in the violation of the ex parte rules. Rainbow Broadcasting Company, 1998WL 439356.

4. The Court of Appeals has recognized that ex parte contacts can taint a proceeding. In Freeman Engineering Associates, Inc., v FCC, 103 F.3d 169 (D.C. Cir. 1997), a written ex parte presentation was sent to the FCC, questioning the feasibility of some technology developed by a company called QUALCOMM. The Court of Appeals observed that, "the ex parte contact was quite serious in that the August Report contained a direct attack on the feasibility of QUALCOMM's proposed technology." 103 F.3d at p. 184. However, the Court concluded that the improper ex parte communication was harmless because, "In its Third Report and Order, the Commission reached the

exact opposite conclusions, explicitly finding that QUALCOMM's 'equipment appears viable for the provision of PCS services.' 9 F.C.C.R. at 1370, P 266. As a result, we conclude that the Report did not taint these proceedings". 103 F.3d 169, 194. Here, of course, the violations, if they occurred, were not harmless; Schoenbohm's license was not renewed.

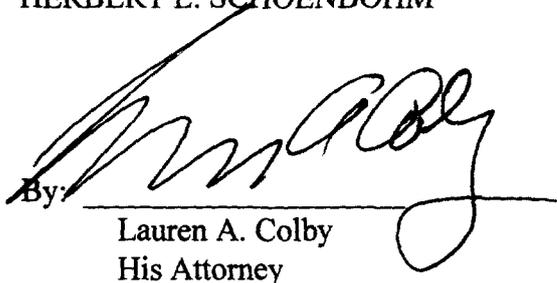
5. Here, Schoenbohm lacks the tools to investigate the possibility strongly suggested in the conversation which he tape recorded that there were improper ex part contacts with the Judge. The Commission has the necessary tools. At a very minimum, the Commission's Inspector General should conduct an investigation. The Commission owes it to itself to make sure that there is not even an appearance that its processes may have been tainted by improper ex parte contacts. Hence, Schoenbohm renews his request for an investigation of this matter.

Respectfully submitted,

HERBERT L. SCHOENBOHM

August 27, 1998

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

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 27th day of August, 1998, to the offices of the following:

ALJ Edward Luton
F.C.C.
2000 L Street, N.W.
Room 225
Washington, D.C. 20554

Thomas D. Fitz-Gibbon, Atty.
Terrance E. Reidler, Atty.
F.C.C.
2025 M Street, N.W.
Room 5328
Washington, D.C. 20554


Traci Maust