

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

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In the Matter of)
)
Application of)
HERBERT L. SCHOENBOHM)
for a Station License)
in the Amateur Radio Service)
)
and)
)
Application of)
HERBERT L. SCHOENBOHM)
for a General Class Operator License)
in the Amateur Radio Service)

WT DOCKET NO. 01-352 /
FILE NO. 0000418274

HEARING DESIGNATION ORDER

Adopted: December 31, 2001

Released: January 9, 2002

By the Commission:

I. INTRODUCTION

1. By this *Order*, we commence a hearing proceeding before an FCC Administrative Law Judge to determine whether the applications of Herbert L. Schoenbohm for a new Amateur Radio Service Station License and new General Class Amateur Radio Service Operator License should be granted. Mr. Schoenbohm's former Amateur Radio Service Station License, call sign KV4FZ, and Amateur Radio Service Operator License were not renewed after it was determined, after an August 8, 1995, hearing before an administrative law judge, that Mr. Schoenbohm's previous criminal behavior, misrepresentation and lack of candor warranted denial of his renewal application. Mr. Schoenbohm is a convicted felon and was found to have misrepresented facts and lacked candor in his testimony in that hearing.

2. The facts leading to Mr. Schoenbohm's disqualification are *res judicata*; they have been thoroughly explored and the determination was made that, at the time of hearing, Mr. Schoenbohm was not qualified to be a Commission licensee. We may not revisit that determination here. However, in evaluating Mr. Schoenbohm's instant application, we must determine if, since the time of his disqualifying behavior in 1982-89¹ and 1995,² Mr. Schoenbohm has been sufficiently rehabilitated that the Commission could be confident that he could be relied upon to observe our rules and policies and deal with the Commission in an honest and forthright manner. There are no facts now before us that would support a finding of rehabilitation. Hence, because we are unable to make a determination that grant of Mr.

¹ Mr. Schoenbohm's criminal behavior occurred in 1982-89. See Application Of Herbert L. Schoenbohm , Kingshill, Virgin Islands, WT Docket No. 95-11, *Supplemental Initial Decision of Administrative Law Judge Edward Luton*, 13 FCC Rcd 1853 (1997) at 2.

² Mr. Schoenbohm's misrepresentation and lack of candor occurred in the course of a hearing held August 8, 1995. See *Id.*

Schoenbohm's applications would serve the public interest, convenience, and necessity, we hereby designate the applications for hearing, as required by Section 309(e) of the Communications Act of 1934, as amended.³

II. BACKGROUND

3. In *Government v. Schoenbohm*⁴ Mr. Schoenbohm was convicted in the United States District Court for the District of the Virgin Islands for violating 18 U.S.C. § 1029(a)(1) in that he used illicitly obtained telephone company access codes and fraudulently employed them to make long distance calls. His conviction was affirmed by the United States Court of Appeals for the Third Circuit.⁵

4. On February 2, 1994, Mr. Schoenbohm applied for renewal of his Amateur Radio Service Station License and Amateur Radio Service Operator License. On February 6, 1995, the Wireless Telecommunications Bureau (WTB), under delegated authority, designated Mr. Schoenbohm's application for hearing.⁶ The initial Hearing Designation Order was superseded by an amended order on February 15, 1995.⁷ The hearing was held on August 8, 1995. The presiding Administrative Law Judge denied Mr. Schoenbohm's application on the basis of his felony conviction and because of Mr. Schoenbohm's knowing violation of the Commission's *ex parte* rules.⁸ Subsequently, on September 27, 1996, the Commission's General Counsel remanded the Schoenbohm matter to the Administrative Law Judge for the taking of evidence on whether Mr. Schoenbohm's testimony at the initial hearing constituted misrepresentation and evinced lack of candor on his part; and whether Mr. Schoenbohm used his amateur radio facilities for communications about how to obtain illicit telephone access codes.⁹ Another hearing was held on April 1, 1997, and the presiding Administrative Law Judge issued a Supplemental Initial Decision in which he held that Mr. Schoenbohm had misrepresented material facts in his testimony concerning his felony conviction and that he misrepresented facts and lacked candor in his testimony about violation of the Commission's *ex parte* rules.¹⁰ The Supplemental Initial Decision was affirmed by the Commission¹¹ and Mr. Schoenbohm's Petition for Reconsideration of the Commission's decision was denied.¹² The United States Court of Appeals for the District of Columbia denied Mr. Schoenbohm's appeal and affirmed the Commission's *Order* on July 8,

³ 47 U.S.C. § 309(e).

⁴ No. Crim:1991/0108 (D.V.I. Dec. 30, 1992).

⁵ *United States vs. Schoenbohm*, No. 93-7516 (Third Circuit July 22, 1994) *rehearing denied*, *United States vs. Schoenbohm*, No. 93-7516 (Third Circuit November 2, 1994).

⁶ Herbert L. Schoenbohm, *Hearing Designation Order*, 10 FCC Rcd 970 (WTB 1995).

⁷ Herbert L. Schoenbohm, *Amended Hearing Designation Order*, 10 FCC Rcd 1669 (WTB 1995). The amended order differed from the prior order to the extent that the amended order deleted the *ex parte* issue specified in the prior order. However, an *ex parte* issue was added in the course of the hearing. See Herbert L. Schoenbohm, *Initial Decision of Administrative Law Judge Edward Luton*, 11 FCC Rcd 1146, 1146 (ALJ 1996).

⁸ Herbert L. Schoenbohm, *Initial Decision of Administrative Law Judge Edward Luton*, 11 FCC Rcd 1146 (ALJ 1996).

⁹ Herbert L. Schoenbohm, *Memorandum Opinion and Order*, 11 FCC Rcd 12537 (OGC 1996).

¹⁰ Herbert L. Schoenbohm, *Supplemental Initial Decision* (Supplemental I.D.), 13 FCC Rcd 1853 (ALJ 1997).

¹¹ Herbert L. Schoenbohm, *Decision*, 13 FCC Rcd 15026 (1998).

¹² Herbert L. Schoenbohm, *Order*, 13 FCC Rcd 23774 (1998).

1998.¹³ The Supreme Court denied certiorari on October 30, 2000.¹⁴ On April 4, 2001, Mr. Schoenbohm filed an application for a new Amateur Radio Service Station License and new Amateur Radio Service General Class Operator License.¹⁵ Mr. Schoenbohm's application is the subject of this hearing designation order.

III. DISCUSSION

5. Absent a demonstration by Mr. Schoenbohm that he now possesses the requisite character qualifications to be a Commission licensee, his pending applications may not be granted. In the Modified Character Policy Statement,¹⁶ the Commission stated:

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 the misconduct.¹⁷ Further, we have said that when, as here, 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.¹⁸

The issue of character, which had originally been raised in the context of applications for broadcast facilities¹⁹ has been applied to non-broadcast matters, such as amateur radio license

¹³ *Schoenbohm v. FCC*, 204 F.3d 243 (D.C. Cir. 2000) rehearing en banc denied (May 2, 2000), as amended (June 28, 2000).

¹⁴ *Schoenbohm v. FCC*, 531 U.S. 968 (2000).

¹⁵ FCC Form 605, File No. 0000418274. We note that, although the Supreme Court denied certiorari on October 20, 2000, the Commission gave Mr. Schoenbohm 90 days thereafter in which to effect the orderly cessation of his station operations. Hence, Mr. Schoenbohm retained his operating privileges until January 28, 2001, when his license cancelled, and only a little more than 2 months later filed his application for new station and operator licenses.

¹⁶ Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, *Policy Statement and Order*, (Modified Character Policy Statement) 5 FCC Rcd. 3252 (1990), recon. granted in part, *Memorandum Opinion and Order on Reconsideration*, 6 FCC Rcd 3448 (1991).

¹⁷ *Modified Character Policy Statement*, 5 FCC Rcd at 3254 n.4, citing *RKO General Inc. et al.*, *Memorandum Opinion and Order*, 5 FCC Rcd 642, 644 (1990) (subsequent history omitted).

¹⁸ *Id.*

¹⁹ Policy Regarding Character Qualifications In Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, *Report, Order and Policy Statement*, (Character Policy Statement) 102 FCC 2d 1179 (1986).

applications.²⁰ In the instant case, Mr. Schoenbohm's character was implicated by his original felony conviction and his subsequent misrepresentation and lack of candor before the Commission. Therefore, absent evidence of Mr. Schoenbohm's rehabilitation, of which there is none at this point, there are substantial and material questions of fact bearing on the public interest that require that Mr. Schoenbohm's amateur radio license applications be designated for hearing pursuant to Section 309(e) of the Communications Act of 1934, as amended.²¹

6. We are therefore designating the following issues to determine whether Mr. Schoenbohm has the character qualifications that merit grant of his applications, using, *inter alia*, the *Modified Character Policy Statement* criteria. Mr. Schoenbohm will have the burden of proceeding and the burden of proof as to all issues.

IV. ORDERING CLAUSES

7. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i); 309(e), the above captioned applications **ARE DESIGNATED FOR HEARING** in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order*, upon the following issues:

- a. To determine whether Herbert Schoenbohm possesses the requisite character qualifications to be a Commission licensee.
- b. To determine in light of the evidence adduced under issue (a), whether the captioned applications should be granted.

8. **IT IS FURTHER ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, and Section 1.221(c) of our rules,²² in order to avail himself of the opportunity to be heard, Mr. Schoenbohm, in person or by his attorney, **SHALL FILE** with the Commission, within twenty days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issue specified herein.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.221(c) of our rules,²³ if Mr. Schoenbohm fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the presiding Administrative Law Judge **SHALL DISMISS** the captioned applications with prejudice for failure to prosecute.

10. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended,²⁴ the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above **SHALL BE** on Mr. Schoenbohm.

²⁰ See Herbert L. Schoenbohm, *Decision*, 13 FCC Rcd 15026 (1998), *recon. denied* 13 FCC Rcd 23774 (1998), *appeal denied sub nom. Schoenbohm v. FCC*, 204 F.3d 243 (D.C. Cir. 2000), *rehearing en banc denied* (May 2, 2000), *as amended* (June 28, 2000), *cert. denied*, 531 U.S. 968 (2000).

²¹ 47 U.S.C. § 309.

²² 47 U.S.C. § 154(i), 47 C.F.R. § 1.221(c).

²³ 47 C.F.R. § 1.221(c).

²⁴ 47 U.S.C. §§ 154(i), 309(e).

11. **IT IS FURTHER ORDERED** that the Commission's Reference Operations Division of the Consumer Information Bureau **SHALL SEND** a copy of this *Order*, via Certified Mail - Return Receipt Requested, to Herbert L. Schoenbohm, at the address shown in his captioned applications: Post Office Box 4419, Kingshill, Virgin Islands, 00851.

12. **IT IS FURTHER ORDERED** that the Secretary of the Commission **SHALL CAUSE** to have this *Hearing Designation Order* or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary