

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:)

HERBERT L. SCHOENBOHM for a)
Station License in the)
Amateur Radio Service)

and)

Application of Herbert L.)
Schoenbohm for the General)
Class Operator License in)
the Amateur Radio Service.)

WT Docket No. 01-352

File No. 0000418274

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
)
 HERBERT L. SCHOENBOHM for a)
 Station License in the)
 Amateur Radio Service) WT Docket No. 01-352
)
 and) File No. 0000418274
)
 Application of Herbert L.)
 Schoenbohm for the General)
 Class Operator License in)
 the Amateur Radio Service.)
)

Commission Meeting Room
FCC Headquarters
455 12th Street, S.W.
Washington, D.C.

Thursday,
February 21, 2002

The parties met, pursuant to notice of the
Commission, at 9:30 a.m.

BEFORE: The Honorable Judge Steinberg
Administrative Law Judge

APPEARANCES:

On behalf of FCC:

JAMES W. SHOOK, Esquire
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On behalf of Complainant:

HERBERT L. SCHOENBOHM, Pro Se

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P R O C E E D I N G S

(9:30 a.m.)

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JUDGE STEINBERG: Okay. We are on the record now.
Let me ask you, can you hear me okay?

MR. SCHOENBOHM: Fine.

JUDGE STEINBERG: And if you have any trouble hearing anybody else, please speak up. Of course, the speaker phone is next to me and the Bureau counsel is probably 15 or 20 feet away.

Okay. On the record. This is Docket No. 01-352 involving the applications of Herbert L. Schoenbohm for a station license in the Amateur Radio Service, and for a general class operator license in the Amateur Radio Service. This case was designated for hearing on January 9th, 2002. The hearing designation order was published in the Federal Register on February 4th, 2002.

By order released January 16th, 2002, the case was assigned to me and the initial pre-hearing conference was scheduled for today. By order released February 14th, 2002, I granted Mr. Schoenbohm's request to participate in this conference by speaker phone.

Let me first take the appearances for Herbert L. Schoenbohm. Why don't you state your name please, sir?

MR. SCHOENBOHM: Okay. Herbert L. Schoenbohm.

JUDGE STEINBERG: And let the record reflect that

1 he is participating by speaker phone.

2 For the Chief, Enforcement Bureau?

3 MR. SHOOK: James Shook and Dana Leavitt.

4 JUDGE STEINBERG: Can you hear that okay,
5 Mr. Schoenbohm?

6 MR. SCHOENBOHM: It's weak but I can hear it.

7 JUDGE STEINBERG: Okay. Let me just review what
8 is presently pending somewhere in the Commission.
9 Mr. Schoenbohm filed on January 17th, 2002, a petition for
10 reconsideration and correction of the hearing designation
11 order. It is my understanding that this pleading is
12 presently pending before the Commission and it will be ruled
13 on by then. So with respect to that pleading, I am not in
14 the loop. Whenever they come out with a decision, then we
15 will all know at the same time.

16 MR. SCHOENBOHM: Would that delay the process at
17 all?

18 JUDGE STEINBERG: No.

19 MR. SCHOENBOHM: Okay.

20 JUDGE STEINBERG: No. Let me just explain that
21 the contents of the hearing designation are not evidence,
22 and what the decision in this case is based upon will be
23 evidence which constitutes any exhibits and any oral
24 testimony and anything that I am asked to take official
25 notice of.

1 For example, there are a couple of Commission -- a
2 couple of ALJ decisions and I guess a couple of Commission
3 decisions, a Court of Appeals decision. I would expect
4 somebody to give me copies of those during the hearing and
5 request that official notice be taken of them.

6 Whatever other evidence or whatever other
7 documentary evidence is put in the record during the
8 hearing, and whatever testimony there is during the hearing,
9 that is the material upon which a decision is based. Any
10 facts or alleged facts contained in the hearing designation
11 order will not be taken into consideration so, you know, I
12 hope that allays your fears that something said in there, if
13 it is inaccurate, will find its way into a decision by me.
14 It will not.

15 Let me turn now to the question of discovery and
16 ask Mr. Schoenbohm if he contemplates engaging in any
17 discovery?

18 MR. SCHOENBOHM: I would only like -- because the
19 only other avenue I guess is a FOYA and that's just a long
20 involved process. If there is any positive predesignation
21 order letters in support of my application that the
22 Commission has in its possession, that they could be made
23 part of the record.

24 JUDGE STEINBERG: Okay. Why don't you confer by
25 telephone or any other way you want to confer with counsel

1 for the Bureau and discuss that. If you want to file a
2 formal request, a request for production of documents or
3 something like that, you are perfectly free to do so.

4 MR. SCHOENBOHM: Could it be done on an informal
5 basis as well?

6 JUDGE STEINBERG: Well, it is up to whatever you
7 and the Bureau decide.

8 MR. SCHOENBOHM: Okay.

9 JUDGE STEINBERG: That is fine with me, generally.
10 I don't like to get involved in discovery unless I
11 absolutely positively cannot avoid getting involved. If you
12 two want to speak and if you can reach an agreement, that is
13 fine. If you cannot reach an agreement, then you might have
14 to file something formal and they would respond and I would
15 rule.

16 MR. SCHOENBOHM: Understood.

17 JUDGE STEINBERG: Okay. I will give you -- in the
18 timetable that I am going to propose, I have built in a
19 certain period for discovery.

20 Let me ask the Bureau, is there any discovery that
21 the Bureau contemplates? You don't have to -- if you do not
22 know, then it is okay to say you do not know.

23 MR. SCHOENBOHM: Now there are several matters
24 that we've been thinking about -- one is the request for
25 admissions, but in that sense we realize that the date

1 for -- the date that is allowed under the Rules expired
2 about two days ago. So the first thing that we would ask is
3 an additional week from Your Honor in order to submit
4 requests for admissions. Whether or not that request is
5 granted, we do contemplate interrogatories and a request for
6 documents.

7 At this time, were we to take depositions, in all
8 likelihood it would be through a proxy or by telephone
9 because, frankly, the Bureau doesn't have travel funds for
10 us to go to the Virgin Islands. So we're not going to be
11 doing that.

12 JUDGE STEINBERG: Okay. Let me -- Mr. Schoenbohm,
13 did you understand what Mr. Shook was talking about?

14 MR. SCHOENBOHM: I believe he said there's a
15 timetable deadline that is approaching rapidly and that he's
16 asking for an extension.

17 JUDGE STEINBERG: Yes. Well, it has expired.

18 MR. SCHOENBOHM: It's expired. Okay.

19 JUDGE STEINBERG: Yes. And do you have any
20 objection to me giving them another week to file a request
21 for admissions?

22 MR. SCHOENBOHM: No. None whatsoever.

23 JUDGE STEINBERG: Okay. So then let me -- I will
24 not write an order about this; it will be on the record. So
25 you have -- why don't we make it a week from tomorrow, make

1 it on a Friday?

2 MS. LEAVITT: March 1st, Your Honor?

3 JUDGE STEINBERG: March -- is that the date within
4 which you can file a request for admissions? Then if you
5 want to file interrogatories and request for production of
6 documents, just follow the Rules. If you want to do it
7 informally that is okay with me. With respect to
8 interrogatories, I just say keep them short.

9 MR. SCHOENBOHM: Could they send me e-mail copies
10 because that's very quick and it would save time?

11 JUDGE STEINBERG: Yes. We are going to get to
12 that a little later.

13 MR. SCHOENBOHM: Okay.

14 MR. SHOOK: That's not a problem. We can do that.
15 We would simply attach it to an e-mail. We have your e-mail
16 address so we can do that easily enough.

17 JUDGE STEINBERG: Okay. There are a number of
18 just procedural matters I want to review, particularly with
19 Mr. Schoenbohm since he is representing himself, to make
20 sure that stuff that he files gets to where it is supposed
21 to get.

22 After the caption -- Mr. Schoenbohm, if you file
23 anything --

24 MR. SCHOENBOHM: Right.

25 JUDGE STEINBERG: -- after the caption you have to

1 put, to Administrative Law Judge Arthur I. Steinberg. If
2 you don't put that "to" there, it might never get to me.

3 MR. SCHOENBOHM: I understand.

4 JUDGE STEINBERG: And I can give you the Rule
5 numbers, if you want, to where it says you are supposed to
6 do this stuff. This is 1.209 and 1.291(a)(4).

7 Another thing is you should -- if you are going to
8 ask for two or three different things, do not put it -- two
9 or three different unrelated things, do not put it in the
10 same pleading. File a separate pleading for each separate
11 request, and that's 1.44 of the Rules.

12 When you file something before me you have to file
13 an original and six copies and that's 1.51(a) of the rules.
14 For all I know, they keep the original and they send
15 Mr. Shook one copy and they send me one copy and they might
16 throw out all of the rest.

17 MR. SCHOENBOHM: So that avoids service to the
18 Bureau?

19 JUDGE STEINBERG: No. You still have to serve the
20 Bureau.

21 MR. SCHOENBOHM: Okay. I've got it.

22 JUDGE STEINBERG: But they generally get a stamped
23 copy and the problem has been -- and by stamped copy I mean
24 when something -- when you file something it receives a
25 stamp from either the Secretary's Office or the mailroom,

1 and that constitutes official proof that it was filed. They
2 get a copy of -- they get a stamped copy and I am supposed
3 to get a stamped copy, but sometimes that takes quite a
4 while to find its way up to where it is supposed to get.

5 The next thing is in calculating any kind of due
6 dates for response of pleadings, use Rule 1.294 and not
7 Rule 1.45. I know that is confusing, but virtually
8 everything we do here is interlocutory in nature and 1.294
9 would be the proper Rule to use.

10 The next thing is you must serve a copy of all
11 pleadings, correspondence, et cetera, on Bureau counsel, and
12 that's 1.47(c) and 1.211.

13 MR. SCHOENBOHM: 1.47(c)?

14 JUDGE STEINBERG: Yes, 1.47(c) and 1.211.

15 MR. SCHOENBOHM: Got it.

16 JUDGE STEINBERG: Service is usually by mail. You
17 just throw a copy in the mail, but in this particular case,
18 you know, Lord knows how long stuff is going to take to get
19 from the Virgin Islands here, and then if it has the
20 Commission's zipcode on it, which it will have, it will
21 go -- you know, it will go someplace and it might get -- we
22 have had mail from October and November stuck because it is
23 being irradiated or something.

24 MR. SCHOENBOHM: Out in Ohio?

25 JUDGE STEINBERG: Yes. So what I would suggest --

1 as a matter of fact, I am going to make it a requirement,
2 that anything filed by anybody should be sent by e-mail to
3 everybody. Just make it an e-mail attachment and just
4 e-mail it up to me and e-mail it up to Bureau counsel and
5 then we can print it out. That way at least we know that we
6 should be expecting something either in the mail or from the
7 Secretary's office. Do you have any problem with that?

8 MR. SCHOENBOHM: No, sir.

9 JUDGE STEINBERG: Okay. And then, of course,
10 anything the Bureau files or any kind of correspondence,
11 they will e-mail to you and anything that I do, any orders
12 that I issue, will be sent also by e-mail just like I did
13 with that -- the one about the speaker phone conference. I
14 think that is very efficient.

15 The final thing is under 1.52 of the Rules, since
16 Mr. Schoenbohm is representing himself, he has to sign and
17 verify all documents that he files in this case. I mean
18 even signing it with your name and address and everything,
19 and I think that is what the Rule requires. I think the
20 verification is something like you have to verify that
21 everything is true and correct to the best of your
22 knowledge; it is something like that. I don't really know.

23 Now I am going to send to Mr. Schoenbohm by mail a
24 copy of the Commission Public Notice, which is DA01-2919,
25 which was released December 14th, 2001, and this essentially

1 summarizes what addresses things should be sent to. If
2 something is hand delivered or messenger delivered, it goes
3 to one address and it ca not be in an envelope. If it is
4 other messenger delivered, things like Thorough Express
5 or -- I don't know if UPS has a messenger delivery service,
6 it goes to a second address. If it is put in the U.S.
7 Postal Service mail, then it goes through a third address.

8 I personally find this very confusing and,
9 therefore, I thought what I would do is I went to the
10 Commission's website yesterday and printed out a copy of the
11 public notice, and I will send Mr. Schoenbohm one today or
12 tomorrow. That should summarize for you where things are
13 supposed to be, what addresses things are supposed to go to
14 if they are transported in certain manners. Okay.

15 Before we get to dates, the last thing I want to
16 talk about is whether the direct case or cases, if the
17 Bureau puts in a direct case, I don't know, they are not
18 required to, whether they should be in writing, entirely in
19 writing, as opposed to being presented orally through
20 witnesses? I'd like to ask Mr. Schoenbohm if he thinks that
21 he can do that?

22 MR. SCHOENBOHM: If I could present a case in
23 writing?

24 JUDGE STEINBERG: Entirely in writing.

25 MR. SCHOENBOHM: Yes.

1 JUDGE STEINBERG: Okay. And I don't know who
2 is -- I presume you are going to testify and I don't know
3 who else is going to testify, but essentially what I would
4 ask you to do is reduce everything into writing and make it
5 an affidavit or a declaration under penalty of perjury, and
6 then it will be exchanged on the exhibit exchange date and
7 then during the hearing that would be introduced as an
8 exhibit, and then you would be cross-examined on it and the
9 same thing with anything from any other witness. We can
10 save a whole lot of time by not having to present oral
11 testimony on everything.

12 I think that by doing it entirely in writing, it
13 also -- it would help you to organize things better, I
14 think. That is what -- I cannot -- under the Rules I don't
15 think I can direct you to do it, but I would strongly
16 encourage you to put everything in writing, and the same
17 thing if the Bureau presents a case, I would strongly
18 encourage them to do the same thing.

19 Okay. The last thing I want to talk about is
20 procedural dates. I have come up with a schedule that I
21 think is reasonable and let me just read it to you. I
22 propose April 5th -- all of these dates are this year -- for
23 the date by which all discovery has to be completed. By
24 completed I mean everything finished, the answers given. I
25 don't mean that this is the date on which the last request

1 is filed.

2 If you file a discovery request, it has to be
3 filed in sufficient time to allow an answer or objection
4 before April 5th. Then that gives you about 42 days from
5 today to do discovery which I think should be more than
6 adequate. Then April 19th, which is two weeks after that,
7 exchange of direct case exhibits. Any stipulations that you
8 can enter into and a list of witnesses, if any, to be called
9 for oral testimony. The April 19th date would be the date
10 that all of these exhibits have to be received by all of the
11 parties, so that if Mr. Schoenbohm has exhibits, they have
12 to be transported in such a manner that they get here by
13 April 19th and the same thing with the Bureau -- they have
14 to be transported in such a way that they get to Mr.
15 Schoenbohm by April 19th.

16 The next date is April 29th, which is notification
17 of witnesses desired for cross-examination. Let me explain
18 that. If Mr. Schoenbohm -- let's say you exchange five
19 exhibits and this is the testimony of five different people,
20 the Bureau might decide, well, we only want to cross-examine
21 three of those people. So they would notify you that they
22 want A, B, and C, and then you would have to produce A, B,
23 and C at the hearing but you would not have to produce the
24 other two.

25 The same thing if the Bureau wants to present --

1 you know, they exchange two or three affidavits and they
2 say, we are going to call the testimony of three more people
3 orally, then you would tell them who you want to
4 cross-examine, and if you did not want to cross-examine some
5 people, then they would not have to produce them at the
6 hearing; their exhibits would just come in without
7 objection.

8 The last date is the hearing date, and I would --
9 and I have May 7th for that, and that would be at 9:30 a.m.
10 here in Washington. Does anybody have any objection to the
11 dates? Mr. Schoenbohm?

12 MR. SCHOENBOHM: My only question here is could I
13 move to waive the hearing just on the submission of the
14 preliminary motion from each side?

15 JUDGE STEINBERG: Well, that is something you and
16 Mr. Shook would talk about. It is up to you two, I guess,
17 unless something occurs and I take a look at the exhibits
18 and I say, somebody has to show up.

19 MR. SCHOENBOHM: Mm-hmm.

20 JUDGE STEINBERG: But that is -- you know, I think
21 it is too early to --

22 MR. SCHOENBOHM: But something like that --

23 JUDGE STEINBERG: I mean, you know, you are the
24 applicant and you have the burden of proceeding and the
25 burden of proof, and I cannot -- I don't think I am in the

1 position to require you to do anything. If you don't want
2 to do it you don't want to do it and then it is -- but you
3 take the risk that whatever you do might not be sufficient.

4 MR. SCHOENBOHM: But a motion for summary
5 judgement from either side simultaneously is a procedure
6 that has been accepted in the past?

7 JUDGE STEINBERG: Oh, sure. Yes, the summary
8 decision, I think the Rules -- it has to be filed 20 days
9 before the hearing. But if you two reach an agreement and
10 you want to file countermotions for summary decision, or
11 maybe joint motion for summary decision, and you ask me to
12 waive the 20 day requirement, if you both agree I am not
13 going to stand in your way. But that is something you and
14 Mr. Shook can talk about.

15 MR. SCHOENBOHM: Okay.

16 JUDGE STEINBERG: I think other than that, did you
17 have any problem with the dates?

18 MR. SCHOENBOHM: No. None whatsoever.

19 JUDGE STEINBERG: Okay. Mr. Shook?

20 MR. SHOOK: The dates are fine, Your Honor.

21 JUDGE STEINBERG: Okay. So those are the dates
22 that I am going to set. I am going to confirm the dates in
23 an order and there will be a couple of footnotes in the
24 order. One is how I like exhibits to be done. I don't want
25 to read it here, but the most -- if you don't have -- if you

1 have any questions about it, if nobody objects you can give
2 me a call and I will tell you how I want them.

3 The most important thing as far as I am concerned
4 is that every exhibit have a number on it, number one, two,
5 three, four, five, or A, B, C, D, E, or if you want to
6 number them with Greek letters, I don't care, and that every
7 page in the exhibit have a number on it starting with number
8 one. You don't -- if it has a cover sheet, you do not have
9 to number the cover sheet, but the first page of the exhibit
10 is one and the last page of the exhibit is whatever that is
11 and every page has a number on it.

12 If you are putting together three documents and
13 each of them is numbered on the document pages one through
14 three, then I want you to put on the bottom of each page one
15 through nine with a little circle on it because I want every
16 page numbered so that everybody -- so that when you say,
17 look at Exhibit 10, page 12, everybody is looking at the
18 same thing. That is one of my pet peeves.

19 Okay. And the last thing that I am going to say
20 is if there is any rebuttal -- I mean if we do go to hearing
21 and there is any rebuttal, it will start immediately after
22 the conclusion of the direct cases.

23 If we finish at 11:00 in the morning, then you can
24 start the next morning, but I do not want to be -- or within
25 the next day or two, but I do not want there to be any, you

1 know, three-week break or anything. If that becomes a
2 problem we can talk about it again. Okay. That is all I
3 have on my agenda.

4 Mr. Schoenbohm, is there anything else that you
5 wanted to talk about this morning?

6 MR. SCHOENBOHM: No, sir. I understand everything
7 completely.

8 JUDGE STEINBERG: Okay. And, Mr. Shook?

9 MR. SHOOK: We have nothing further.

10 JUDGE STEINBERG: Okay. Then what we will do is
11 we will conclude the conference and if anyone else needs a
12 conference, another conference, you can call me. I would
13 say call my office, but I am my office, just me, myself,
14 and I. Then I will try to talk you out of it and if I
15 cannot talk you out of it, then we will have another
16 conference and we can do it by speaker phone.

17 MR. SCHOENBOHM: One last question, sir.

18 JUDGE STEINBERG: Sure.

19 MR. SCHOENBOHM: You said everything -- all of
20 your orders will be e-mailed to me?

21 JUDGE STEINBERG: Correct.

22 MR. SCHOENBOHM: Oh, that's fine.

23 JUDGE STEINBERG: Just, you know -- just like the
24 last one. It will say advanced copy on the top. So that is
25 not the official copy; the official copy is one that will

1 come from someplace in the Commission and it will have -- it
2 will have -- it will be xeroxed with my signature on it.

3 I put advanced copy on it because it is
4 theoretically possible that, for instance, if I pick up a
5 typographical error then I will correct it, if I pick it up,
6 but there is no way that I am going to send you an advanced
7 copy of something that says, your request is granted and
8 then you are going to get something in the mail that says,
9 it is denied, without you knowing about it.

10 MR. SCHOENBOHM: I understand.

11 JUDGE STEINBERG: Okay. So why don't we -- I
12 would like to, you know, thank you for participating this
13 way. I think it was -- I have not had that many speaker
14 phone conferences, and this is -- this was nice, let me put
15 it this way. I appreciate it.

16 So we will go off the record now and thank you,
17 Mr. Schoenbohm, and thank you, Mr. Shook and Ms. Leavitt. I
18 am going to hang up now, so don't think I am rude.

19 MR. SCHOENBOHM: Okay.

20 JUDGE STEINBERG: Okay.

21 MR. SCHOENBOHM: Good morning to all of you.

22 JUDGE STEINBERG: Bye-bye. Thank you.

23 MR. SHOOK: Bye-bye.

24 MS. LEAVITT: Bye-bye.

25 //

1 (Whereupon, at 9:55 a.m., the meeting in the
2 above-entitled matter was adjourned.)
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REPORTER'S CERTIFICATE

CASE TITLE: Application of Herbert L. Schoenbohm
HEARING DATE: February 21, 2002
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 2/21/02


Marcia Logan
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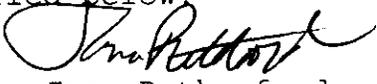
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I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 2/21/02


Jane Rutherford
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