

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

FCC 02M-25



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

MEMORANDUM OPINION AND ORDER

Issued: April 8, 2002

;

Released: April 10, 2002

Under consideration are: (a) Enforcement Bureau's Motion to Order Herbert L. Schoenbohm to Clarify His Admissions, filed on March 19, 2002, by the Enforcement Bureau ("Bureau"); (b) Enforcement Bureau's Motion to Rule on Objections Lodged Against Admissions Requests, filed on March 19, 2002, by the Bureau; (c) Applicant's Answers to the Enforcement Bureau's Request for Admission of Facts and Genuineness of Documents, dated March 25, 2002, submitted by Herbert L. Schoenbohm ("Mr. Schoenbohm"); (d) Enforcement Bureau's Motion to Compel, filed on March 27, 2002, by the Bureau; and (e) a letter to the Presiding Judge from Mr. Schoenbohm, dated April 2, 2002, relating to the Bureau's Motion to Compel.

Admission Requests

On March 1, 2002, the Bureau served on Mr. Schoenbohm a Request for Admission of Facts and Genuineness of Documents. Mr. Schoenbohm responded on March 12, 2002. In its Motion to Order Herbert L. Schoenbohm to Clarify His Admissions, the Bureau asserts that Mr. Schoenbohm's response "contains duplicate and misnumbered answers," and requests the issuance of an order directing Mr. Schoenbohm to renumber his answers so that they correspond with the Bureau's Admission Requests. In Applicant's Answers to the Enforcement Bureau's Request for Admission of Facts and Genuineness of Documents, dated March 25, 2002, Mr. Schoenbohm appears to have conformed his responses to the numbering contained in the Bureau's Admission Requests. Consequently, the Bureau's motion to clarify will be dismissed as moot.

In its Motion to Rule on Objections Lodged Against Admissions Requests, the Bureau seeks an order compelling Mr. Schoenbohm to provide "substantive response[s]" to Admission Request Nos. 14, 21-25, 28-31, and 33. This motion will be denied. The Bureau states in its motion that the "focus" of the Admission Requests under examination "is . . . on Mr. Schoenbohm's state of mind" when he testified in a previous hearing proceeding. Motion to Rule at 3. However, Mr. Schoenbohm's state of mind is not an objective "fact" about which there can be no dispute. As a result, an explication of his state of mind is not a proper matter for a request for admission of

facts. See Section 1.246(a) of the Commission's Rules (a party may serve on any other party a written request for the admission "of the truth of any relevant matters of *fact* "; emphasis added).¹ Therefore, Mr. Schoenbohm will not be required to supplement his responses to the Bureau's Admission Requests.

Interrogatories

On March 6, 2002, the Bureau served Interrogatories on Mr. Schoenbohm. On March 19, 2002, Mr. Schoenbohm submitted his responses. In its Motion to Compel, the Bureau requests that Mr. Schoenbohm be ordered "to provide complete and meaningful answers" to the Bureau's interrogatories. Motion to Compel at 1. In this regard, the Bureau claims that Mr. Schoenbohm's answers "did not 'identify' persons, entities or documents in accordance with the interrogatories' directions." *Id.* In a letter addressed to the Presiding Judge, Mr. Schoenbohm states that he "will . . . go over the Bureau's Motion and will file a supplementary response to the interrogatories, specifically addressed to the additional information requested in the Motion." Letter at 1.

In light of Mr. Schoenbohm's representation that he will provide the Bureau with the information it is seeking, the Motion to Compel will be dismissed. However, Mr. Schoenbohm will be directed to file his supplemental response on or before April 11, 2002. In addition, although the discovery completion deadline will have passed, the Bureau may, if it wishes, file a new motion to compel relating solely to Mr. Schoenbohm's supplemental answers.

Ordering Clauses

Accordingly, IT IS ORDERED that the Enforcement Bureau's Motion to Order Herbert L. Schoenbohm to Clarify His Admissions, filed by the Bureau on March 19, 2002, IS DISMISSED as moot.

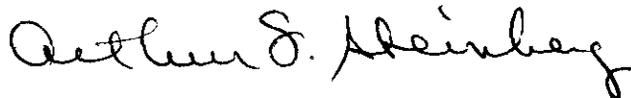
IT IS FURTHER ORDERED that the Enforcement Bureau's Motion to Rule on Objections Lodged Against Admissions Requests, filed by the Bureau on March 19, 2002, IS DENIED.

IT IS FURTHER ORDERED that the Enforcement Bureau's Motion to Compel, filed by the Bureau on March 27, 2002, IS DISMISSED.

IT IS FURTHER ORDERED that Mr. Schoenbohm SHALL FILE his supplemental answers to the Bureau's interrogatories on or before April 11, 2002.

IT IS FURTHER ORDERED that the discovery completion deadline IS EXTENDED and that the Bureau MAY FILE a motion to compel addressed to Mr. Schoenbohm's supplemental answers to interrogatories.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

¹ In addition, the Admission Requests at issue are argumentative.