

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

SEP 19 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Renewal Applications of)
)
Kevin David Mitnick)
Licensee of Station N6NHG in the Amateur)
Radio Service)
)
and)
)
Kevin David Mitnick)
General Class Operator License in the)
Amateur Radio Service)

WT DOCKET NO. 01-344

To: Honorable Richard L. Sippel
Chief Administrative Law Judge

**JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF
KEVIN DAVID MITNICK AND ENFORCEMENT BUREAU**

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SUMMARY

The evidence supports granting Kevin David Mitnick's renewal applications for station N6NHG and general class operator license in the Amateur Radio Service.

In February 1995, Mr. Mitnick was arrested and jailed in connection with criminal computer activity he committed from 1992 until his arrest. Mr. Mitnick ultimately pled guilty to several felony counts of wire and security fraud, and his incarceration continued until January 21, 2000. In December 1999, one month prior to his release, Mr. Mitnick filed the above-captioned applications for renewal of his amateur radio licenses.

Due to the fact that his convictions involved fraud, the Commission designated for hearing Mr. Mitnick's renewal applications to determine whether he possesses the requisite character qualifications to be and remain a Commission licensee.

Based on the record, there is sufficient evidence to support a finding that Mr. Mitnick has the requisite character to remain a Commission licensee. Three witnesses testified in person as to Mr. Mitnick's reputation for honesty. Mr. Mitnick has been gainfully employed since his release from prison, and he has taken several steps to remedy the effects of his criminal activities. There is also sufficient evidence that Mr. Mitnick has rehabilitated himself and will not engage in future criminal acts. Finally, there is nothing in the record to support a conclusion that Mr. Mitnick has violated the Commission's rules or regulations. Based on the evidence of Mr. Mitnick's current reputation for honesty, his rehabilitation, and his overall history of compliance with the Commission's rules, it appears unlikely that Mr. Mitnick will engage in future criminal misconduct. Accordingly, the parties recommend that the Commission grant the above-captioned licenses.

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

In the Matter of)	WT Docket No. 01-344
)	
KEVIN DAVID MITNICK)	File No. 00000-58498
)	
Licensee of Station N6NHG in the)	
Amateur Radio Service for Renewal)	
of Station License)	
)	
KEVIN DAVID MITNICK)	
)	
For Renewal of Amateur Radio)	
General Class Operator License)	

To: Honorable Richard L. Sippel
Chief Administrative Law Judge

**JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF
KEVIN DAVID MITNICK AND THE ENFORCEMENT BUREAU**

Kevin David Mitnick (“Mr. Mitnick”) and the Enforcement Bureau, by respective counsel, and pursuant to the *Order*, FCC 02M-58, released June 28, 2002, hereby submit their Joint Proposed Findings of Fact and Conclusions of Law.

I. Preliminary Statement:

1. By *Hearing Designation Order*, 16 FCC Rcd 22,740 (2001) (“*HDO*”), the Commission commenced this proceeding to determine whether the above-captioned Amateur Radio Service renewal applications filed by Kevin David Mitnick should be granted. The Commission concluded a hearing was necessary because Mr. Mitnick is a convicted felon whose illegal activities have included the interception of electronic communications, computer fraud, wire fraud, and causing damage to computers. The Commission concluded that Mr. Mitnick’s criminal behavior raised a substantial and material question of fact about his character.¹

2. Accordingly, the Commission specified the following issues for resolution in this proceeding:

- (a) To determine the effect of the criminal convictions of Kevin David Mitnick on his qualifications to be and remain a Commission licensee.
- (b) In light of the evidence adduced pursuant to the foregoing issues, to determine whether Kevin David Mitnick is qualified to be and remain a Commission licensee.
- (c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether the captioned applications filed by Kevin David Mitnick should be granted.²

3. The Commission further specified that the burden of the introduction of evidence and the burden of proof rested with Mr. Mitnick.³

¹ See *HDO* at para. 1.

² See *HDO* at para. 10.

³ See *HDO* at para. 13.

4. A hearing on the issues was held in Washington, D.C., on June 18, 2002. Additional witness testimony was taken by speakerphone from David G. Hall on June 24, 2002, and from Carol A. Long on June 26, 2002. At the conclusion of Ms. Long's testimony, Chief Administrative Law Judge ("ALJ") Richard Sippel closed the record and directed the filing of proposed findings of fact and conclusions of law no later than September 19, 2002 (Tr. 167).⁴

II. Findings of Fact

A. Background

5. Mr. Mitnick began hacking computers when he was 17 and continued these activities until he was about 31 (Tr. 97-100). To Mr. Mitnick, "hacking" means unlawfully accessing other peoples' computers and reading their source codes (Tr. 80-81). To him, it was an "intellectual challenge" (Tr. 94). Mr. Mitnick explained how he got into hacking, as follows:

THE COURT: [W]as there some kind of a compulsion thing in connection with this hacking or getting into sites?

THE WITNESS: I was tunnel visioned. I don't believe it was a mental disorder.

I guess it was I was kind of obsessive in what I do. I tunnel vision on a particular project. And see, when I started into this field of hacking, it was all cool and entertaining back then.

In fact, my teachers awarded me for writing programs and obtain[ing] people's passwords. In fact, in those days it was accepted as it was all right to do. And then, as society changed around and it became a very serious subject. Like I guess I could relate it to the analogy of the smoking pot back in the '60s was the

⁴ References to "Tr. ___" are to the transcript of the hearing proceedings. References to "EB ___" are references to the Enforcement Bureau's exhibits. Mr. Mitnick's exhibits will be referenced as "Mitnick ___".

cool thing to do. Right now, there is war on drugs.

Well, because I was so into my - - so tunnel visioned into my hobby, was that society was changing around me. Kevin didn't change. I went on doing what I started doing when I was in high school.

THE COURT: You say that you viewed it as being an accepted thing at that time?

THE WITNESS: It was at that time. There was no law[] against it at that time, and the people - - the role models that I - - like the teachers in school when I would write programs that would, like, ca[tch] people's passwords, for example, I used to get credit. I used to be encouraged by my teachers that, that's an okay thing to do.

THE COURT: This is at what age?

THE WITNESS: 17 - - 16 years old.

THE COURT: High school?

THE WITNESS: Yes. And then I got so into it, and it was so fascinating to me, that I even became - - you know, they passed legislation and society changes where it became a very negative thing to do, and I still continued doing it anyway for a number of years. (Tr. 95, 96.)

6. Mr. Mitnick's hacking eventually got him into trouble. In December 1988, Mr. Mitnick was arrested for hacking computers owned by Digital Equipment Corporation, and he was held in pretrial detention for eight months (Tr. 57). Ultimately, Mr. Mitnick signed a plea agreement that provided for a year of imprisonment and three years supervised release, which expired on December 7, 1992 (Tr. 57). In January, 1993, Mr. Mitnick learned that a warrant had been issued against him for violation of the terms of his supervised release (EB5, p. 9). Instead of turning himself in, Mr. Mitnick became a fugitive from justice, using false names to avoid arrest (Tr. 57-60). Mr. Mitnick also used counterfeit access devices (stolen telephone numbers)

to make cellular telephone calls without paying for them (Tr. 56-57, 98-101). Finally, Mr. Mitnick continued to hack into others' computer systems (EB 5, pp. 2-9).

7. After two years on the run, Mr. Mitnick was arrested again in February 1995 (Tr. 55, 57). He spent almost all of the next five years in jail. First, he resided a North Carolina prison. After being sentenced to eight months by a North Carolina court for possessing unauthorized access devices, Mr. Mitnick was transferred to a federal prison in California (EB 5, p. 2). On September 26, 1996, an Indictment was handed down against him in the United States District Court for the Central District of California, Case No. 96-881 (EB 1). The Indictment charged Mr. Mitnick with having "carried out a scheme to defraud, and to obtain property by means of false pretenses, representations and promises, by: (a) obtaining unauthorized access to computers belonging to numerous computer software and computer operating systems manufacturers, cellular telephone manufacturers, Internet Service Providers, and educational institutions; and (b) stealing, copying, and misappropriating proprietary computer software belonging to the companies described below" (EB 1, pp. 1-2). As a result of a plea agreement in that case, Mr. Mitnick admitted that he obtained proprietary software from various entities by fraudulent means (EB 5, p. 2). As a result, the Court sentenced him to 46 months (which included the time already served subsequent to his February 1995 arrest)⁵ and directed him to pay restitution of \$4125.00 (EB 3, p. 2, EB 5, p. 2; Tr. 102, 104). Mr. Mitnick was released from prison on January 21, 2000, and placed on supervised release until January 20, 2003 (Tr. 50, 92).

8. In December 1999, approximately one month before being released from prison, Mr. Mitnick completed an application to renew his amateur radio licenses (Tr 53, 65). Item 15 of the

⁵ The transcript states that he served "nine years," an obvious error.

application directs an applicant to supply his address (EB 6, p 1). Mr. Mitnick provided an address in Las Vegas, Nevada (EB 6, p. 1), which was his grandmother's address (Tr. 65-67). Mr. Mitnick, however, was incarcerated at a California prison at the time he filled in his application (Tr. 47-48, 65-68). At the hearing, Mr. Mitnick explained that he had provided the Las Vegas address because he had once lived there, his radio equipment was located there at that time, and he used his grandmother's address as his mailing address while in prison (Tr. 65-67). Mr. Mitnick's grandmother would then either forward his mail to the prison, or hold it for him (Tr. 67). Mr. Mitnick further explained that he provided his grandmother's telephone number as his contact number because he could not receive direct-dialed calls while in prison (Tr. 67-68). According to Mr. Mitnick, his grandmother would then relay any phone messages to him in prison (Tr. 68). Mr. Mitnick testified that, at the time he submitted his application, he believed the FCC knew that he was incarcerated because of the notoriety of his criminal activities (Tr. 68).

9. In relation to amateur radio, Mr. Mitnick has been licensed to operate as a General Class Operator under call sign N6NHG since March 4, 1986.⁶ Mr. Mitnick testified that his hobby as an amateur radio operator started with his intense desire to learn about and help improve technology and the amateur radio service. During his younger years, Mr. Mitnick provided assistance at special events (charitable events such as the March of Dimes) as an

⁶ In 1976, the Commission had licensed Mr. Mitnick to operate as a General Class Operator under call sign WA6VPS. (EB 5, p. 2; Tr. 64-65) Mr. Mitnick surrendered that license before being issued call sign N6NHG in 1986. (EB 5, p. 2; Tr. 65). According to Mr. Mitnick, he surrendered his first license at the urging of his juvenile parole officers (Tr. 86-89). They had received a complaint from another amateur operator, alleging that Mr. Mitnick had interfered with his station (Tr. 87-88). Mr. Mitnick testified that the allegations were false (Tr. 87-88).

amateur radio operator (Mitnick 1, p. 3; Tr. 85). Mr. Mitnick also testified that he assisted repeater owners with the maintenance and operation of their equipment (Mitnick 1, p. 3; Tr. 86). Mr. Mitnick testified that, since his release from prison, he communicates with his amateur radio station daily (Tr. 89-92). Mr. Mitnick values his license because amateur radio is a communications medium where he feels comfortable conversing with others and discussing particular topics that interest him (Mitnick 1, p. 3).

B. Rehabilitation Evidence

(1) Testimony of Kevin David Mitnick

10. One week prior to Mr. Mitnick's release from custody, his father suffered a heart attack (Mitnick 1, p. 1). The doctors treating Mr. Mitnick's father ordered him to undergo a triple bypass surgery within several hours of Mr. Mitnick's release (Mitnick 1, p. 1). Mr. Mitnick's father became infected with a staph infection he contracted during the surgical process, and he was treated with a powerful antibiotic (Mitnick 1, p. 1). Despite such treatment, however, his infection persisted (Mitnick 1, p. 1).

11. In light of these circumstances, Mr. Mitnick spent a majority of his time caring for his father and helping him run his business, a construction company (Mitnick 1, p. 1). Several months after Mr. Mitnick was released from prison, Mr. Mitnick's father was diagnosed with lung cancer, so Mr. Mitnick continued to care for his father and his business during his father's illness (Mitnick 1, p. 1). Eventually, Mr. Mitnick's father passed away on July 4, 2001 (Mitnick 1, p. 1).

12. Mr. Mitnick testified that during the time he cared for his father, he engaged in serious introspection and reflected on what he had done with his life (Mitnick 1, p. 1). Mr.

Mitnick decided to turn his life around and dedicate his life to a career in broadcast radio, public speaking, and writing to help government, businesses, and individuals minimize the risks associated with computer intrusions (Mitnick 1, p. 1).

13. In March 2000, at the invitation of Senator Thompson, Mr. Mitnick testified before Congress. The subject related to the security and reliability of information systems owned and operated by, or on behalf of, the federal government (Mitnick 1, p. 2; Tr. 73-74).

14. Later that year, Mr. Mitnick provided information to the U.S. Commission on National Security in support of their efforts to create a report for the president-elect of the United States on protecting our national critical infrastructures from enemies foreign and domestic (Mitnick 1, p. 2). The Commission spent two full days with Mr. Mitnick in Los Angeles to discuss the strategies, methods, and tactics used by computer intruders, and to identify specific types of safeguards that would help the nation protect these vital assets (Mitnick 1, p. 2).

15. Beginning in January 2001 and continuing into December 2001, Mr. Mitnick hosted a weekly radio show called "The Darkside of the Internet" on a Los Angeles radio station (Mitnick 1, p. 2; Tr. 69-72). The show was about demystifying the Internet for the public and helping people and businesses better protect their privacy and security when using the Internet (Mitnick 1, p. 2). The show gave Mr. Mitnick an opportunity to share valuable information with the public on threats and vulnerabilities related to computers and telephone systems and to emphasize the importance of computer security (Mitnick 1, p. 2).

16. Also in 2001, an owner of a business who had been victimized by an unknown person retained Mr. Mitnick as an expert witness to investigate the cause and identity of the person responsible for blocking, redirecting, or otherwise interfering with telephone calls to his

business (Mitnick 1, p. 2; Tr. 74-75).⁷

17. In December 2001, Mr. Mitnick signed a book contract with John Wiley & Sons (Tr. 75-76). In June 2002, Mr. Mitnick finished co-writing the book, which focuses on the non-technical strategies and methods of how computer systems and confidential business information can be compromised (Tr. 75-76; Mitnick 1, p. 2). The content is not a personal story of Mr. Mitnick's past transgressions, but rather an in-depth educational tool designed to raise awareness in people who own, operate, and use computer systems (Mitnick 1, p.2). This book has been written to assist government, business, and the general public to defend against attacks to computer systems to minimize financial losses, and the loss of public confidence in their organizations (Mitnick 1, p. 2).

18. In addition to his writing activities, Mr. Mitnick continues to pursue a career in public speaking and consulting (Tr. 54). Mr. Mitnick has made a demo tape for a new radio program, in the hope that Premier Radio Networks will produce a nationally-syndicated talk show (Tr. 71-72). Mr. Mitnick also is currently creating a corporate training film on computer security (Tr. 54).

19. While researching the material for the book and previous magazine articles that Mr. Mitnick has written, he has come to understand the serious financial consequences, or other collateral damage to any organization, that suffers a serious security incident, whether a break in

⁷ After certain matters are resolved, Mr. Mitnick expects to testify before the Nevada Public Services Commission on the security, or lack thereof, of the public telephone switched network (Mitnick 1, p. 2; Tr. 74-75). The Commission is extremely concerned that the telecommunications infrastructure in Las Vegas, Nevada, or elsewhere, is reasonably secure from the threat of cyberterrorism or domestic fraud (Mitnick 1, p.2). Mr. Mitnick presumes his expertise, background, and experience in these matters will substantially assist the Commission, his client, and society as a whole (Mitnick 1, p. 2).

to a computer system, or loss of proprietary information (Mitnick 1, p. 2; Tr. 79-82). The losses could result in substantial financial damages, loss of customers, or a loss of public confidence in the company itself (Mitnick 1, pp. 2-3; Tr. 79-80).

20. Mr. Mitnick testified that during his long hacking career, it was never his intent to profit or otherwise harm the victims (Mitnick 1, p. 3; Tr. 81-82). Mr. Mitnick testified that his motivation was to learn about technology by exploring computer systems and networks, and to enjoy the intellectual stimulation of out-witting other programmers (Mitnick 1, p. 3; Tr. 81-82). Although Mr. Mitnick testified that his motives were not malicious or evil, he acknowledges that his actions, nevertheless, were illegal. Mr. Mitnick now realizes and regrets that his actions did, in fact, cause harm and damage to others (Mitnick 1, p. 3).

21. Mr. Mitnick also acknowledges that, until he was released from prison, he was bitter. However, following his release from prison, he came to accept that what he had done was wrong, and he felt “terrible about it” (Tr. 100). Mr. Mitnick gave the following testimony concerning his unauthorized use of cell phones:

THE WITNESS: I thoroughly regret it because, at least, I can reflect back to my dad, when he was alive, and people would clone his cell phone. They call it ‘cell phone cloning.’ He would get these bills and then he would have to call the phone company and go with a highlight and, yes, I made this call and no, I didn’t make this call.

Eventually, the phone company would take off the charges, but I was the trouble that I ended up - - you know, after the fact, that I caused my dad of having to go through this painstaking process, which was a real pain in the butt - - excuse the expression. I feel terrible, obviously, that I made people - - several people go through this process.

THE COURT: Well, when did you start having those kinds of feelings of remorse or regret?

THE WITNESS: To be honest, I was bitter up until the time that I was released from federal prison. Then after a period of time, I began to accept - - the bitterness subsided somewhat, and I came to accept, you know, what I was doing was very wrong, especially, the cell phone stuff and how that hurt innocent people. I feel terrible about it and I wish I never did it, but I can't take back the past. It's a done deal. All I can do is assure everybody I'm not going to do that again. (Tr. 99-100.)

22. Mr. Mitnick testified that, following his release from prison, he has been leading the life of a law-abiding citizen, and he enjoys that life immensely. Mr. Mitnick testified that he has no desire to return to his former life and that he is never even tempted to do so (Mitnick 1, p. 3; Tr. 100).

23. In response to another question from the Court, Mr. Mitnick testified that:

THE WITNESS: I matured - - hacking is like a young man's crime.⁸ You eventually grow out of it. You mature. Right now, my goals in life is to live a productive life and to earn a living and try to make up for all the time that I lost and try to be a productive citizen. That's part of the reason why, you know - - one of the reasons I wrote this book was to help people. I [am] trying to take my background, experience and all in order to help government, business and people. That's what I can do now because that's all the experience I have. I can take it to the table. That's what I'm trying to do. (Tr. 103.)

Today, Mr. Mitnick is enjoying a better income than at any time in his life. He knows, however, that if he goes back to hacking, he will go back to jail, and he is never tempted to go back to his former life (Tr. 94-95).

(2) Statement of Larry Hawley

24. Larry Hawley is Mr. Mitnick's probation officer. Mr. Hawley submitted a statement which reads, in pertinent part, as follows:

⁸ The transcript says "fun," instead of "crime," but this is an error. A motion to correct the

Mr. Mitnick has been on supervised release since January 21, 2000. He is scheduled to terminate supervision on January 20, 2003. While under supervision he has maintained total compliance with the terms and conditions set down by the Court and the U.S. Probation Officer. He has channelled his energies in the law abiding, productive avenues, such as talk radio. He is presently co-authoring a book on how to protect against social engineering and computer breeches.

While under supervision Mr. Mitnick was given permission to use his ham radio. He has done so without incident and we have no objection to Mr. Mitnick retaining his ham radio license.

During the course of supervision, Mr. Mitnick has remained free of any law violations and has made a very positive adjustment back into society. (Mitnick 4, p. 1.)

(3) Testimony of Alex Kasper

25. Alex Kasper ("Mr. Kasper"), whose full legal name is Alex Kasperavicius, is and has been a Los Angeles telecommunications consultant for the past five years (Tr. 108). Mr. Kasper is also a former amateur radio licensee (Tr. 113). Mr. Kasper has known Mr. Mitnick since 1987, when Mr. Mitnick hacked into, but did not damage, a computer database Mr. Kasper managed (Tr. 108-109). Mr. Kasper appeared as a witness at the hearing and submitted a statement which reads, in pertinent part, as follows:

I first met Kevin Mitnick in the summer of 1987. A partner and I had developed one of the first computer dating systems in Los Angeles and Kevin and his friend Lewis DePayne promptly hacked into it. While very annoyed I had to admire the clever way he had done it and we eventually became friends.

As I grew to know Kevin over the following years I was often perplexed and also fascinated by his almost possessed drive to gain access to computer systems. He could not and would not stop - more often than not throwing caution to the winds in his attempt to

transcript will be filed.

get the goal of “access” in order to answer some question -of-the-hour. He was so good that he had unlimited access to most any system imaginable - and as such was an intriguing resource for information one could not gain by any other means.

Unfortunately, Kevin had more than a chip on his shoulder, believing he was invincible and that he should be allowed to do anything he wished simply because it was “he”. This invincible attitude was pervasive in Kevin’s thought and deed and combined with his uncanny knack for compromising computer systems made him a quite obnoxious and threatening foe for any entity unlucky enough to fall in his sites [sic].

What’s even more interesting is that Kevin didn’t see it this way. No matter what argument was presented to him, he continually asserted that what he did was merely for intellectual pleasure - and that what he did never “hurt” anyone. The government, in its attempts to rein him in, simply didn’t understand and were “misguided” and felt the need to persecute him because of his notoriety.

Despite much warning from me, other friends and family, Kevin continued his pursuits and eventually found himself incarcerated again. During his prison term I kept in contact with him via telephone and listened as his mood went from anger to disbelief and frustration - initially refusing to accept that he could possibly deserve the treatment his [sic] was receiving.

After a while, however, I did become aware of a change. I think Kevin started to realize that what he did had had a real and severe impact on the lives of people he had affected. And while still frustrated at the situation, Kevin did begin to express some remorse for what he had done.

Over the last two years since his release, Kevin has been successful in personally contacting many of the individuals responsible for the systems he had hacked. He has apologized directly to them and also heard first hand accounts of the sleepless nights and endless frustration caused by his “intellectual stimulation.” I have been present for several of these meetings, and while it’s obvious he has had a hard time facing these people, I get the impression that he has some sort of cathartic drive to do it and show remorse. (Mitnick 2, pp. 1-2.)

26. When asked about Mr. Mitnick's reputation for honesty, Mr. Kasper responded that "he's always been honest with me" (Tr. 114).

(4) Testimony of David G. Hall

27. David G. Hall ("Mr. Hall") is currently the senior vice president in charge of programming at the Premiere Radio Networks in Sherman Oaks, California (Tr. 125). Before that, however, he was for 14 years the vice president of programming at talk radio station KFI, Los Angeles, California (Tr. 125). In his capacity as a programming executive, Mr. Hall is quite familiar with the FCC's rules (Tr. 135-136).

28. When Mr. Hall was at KFI, he heard Mr. Mitnick appear as a guest on a talk show. Mr. Hall was impressed by Mr. Mitnick's informative, likeable, and approachable demeanor, so Mr. Hall asked Mr. Mitnick about the possibility of doing a talk show (Tr. 125). As a result, Mr. Mitnick began doing a weekly show, entitled "The Dark Side of the Internet with Kevin Mitnick" (Tr. 127). The show ran about a year, but was cancelled in the fall of 2001 due to budgetary constraints (Tr. 128). Recently, Mr. Hall offered Mr. Mitnick the use of Premier's studio, so that Mr. Mitnick could make a demo tape for a new radio program (Tr. 131-132).

29. During the course of the KFI show, Mr. Mitnick and Mr. Hall would meet in Mr. Hall's office, "irregularly but frequently," to discuss the general direction of the show (Tr. 130). As an authority figure to Mr. Mitnick, Mr. Hall was familiar with the restrictions contained in Mr. Mitnick's probation agreement (Tr. 130 -131, 133). Mr. Hall noted that Mr. Mitnick reacted positively to his coaching (Tr. 130). Mr. Hall also noted that, during the time Mr. Mitnick worked for him, there were many opportunities for him to violate the terms of his probation by,

for example, using computers (Tr. 133). Mr. Mitnick always resisted these temptations, however, saying that he never wanted to go back to prison (Tr. 133-135).

30. Mr. Hall testified as follows:

QUESTION: And to what do you attribute his, I guess, change of heart in terms of his prior criminal activities and his current behavior?

WITNESS: I have the feeling that he wants to - - he really wants to just fly straight, like he's - - he feels like has paid his debt. You know, he has done what he can. He has - - he just seems to be looking at life differently than he once did.

And you have to remember I didn't know him back then, so it's kind of a lopsided reference, but I mean, he just - - you know, every conversation or meeting, it just seemed like he's so focused on doing the right thing and really straightening out his life and going forward and doing whatever is necessary to make that happen.

QUESTION: So you have confidence - - how confident are you that he has changed his behavior permanently?

WITNESS: Based on my experience with him, 100 percent
(Tr. 135.).

Asked whether he had any concerns about Mr. Mitnick's ability to deal with the FCC in an honest and forthright manner, Mr. Hall stated that he had none (Tr. 132).

(5) Testimony of Carol Long

31. Carol Long ("Ms. Long") has for five and one-half years been employed as an Executive Acquisitions Editor for John Wiley & Sons, a book publisher with offices in Southborough, Massachusetts and New York City (Tr. 149-150). In that position, she identifies topics for books and identifies and conscripts experts to write on these topics. She does this

approximately 50 to 60 times a year and estimates that she has been responsible for the publication of approximately 300 books (Tr. 151-152).

32. In the fall of 2000, a representative of Mr. Mitnick contacted Ms. Long about a potential book proposal (Tr. 152-153, 155-156). At that time, Ms. Long knew of Mr. Mitnick's reputation as a hacker and knew that he had spent time in prison (Tr. 153-154). Approximately 15 months then elapsed between the presentation of the proposal and the execution of a formal book contract (Tr. 158). During that period, Ms. Long met with Mr. Mitnick twice, once in Santa Monica, California, and again in San Francisco, California. Each meeting lasted approximately six hours (Tr. 159). Eight months later, in December of 2001, John Wiley & Sons entered into a formal book contract with Mr. Mitnick (Tr. 160-161). The book is now complete (Tr. 161).

33. While Mr. Mitnick was writing the book, Ms. Long had occasion to meet with him in San Jose, California. These meetings took place during a security conference held in February of 2002 and extended over a period of four days (Mitnick 5, p. 1; Tr. 161). Additionally, during the period in which the book was being written, Ms. Long spoke with Mr. Mitnick on the telephone approximately 20 times (Tr. 162). As the person responsible for ensuring that Mr. Mitnick fulfilled the terms of his contract with Wiley and Sons, Ms. Long observed that Mr. Mitnick was cooperative and very good at taking direction (Tr. 161).

34. Based upon her observations of Mr. Mitnick, it is Ms. Long's opinion that "he is not likely to return to the ways that put him in jail in the first place" (Tr. 162). Moreover, when asked about Mr. Mitnick's reputation for honesty, Ms. Long responded that, "I have not experienced anything except his being honest with me." (Tr. 162). Ms. Long provided two

examples supporting her opinion. First, as regards his book contract, Ms. Long notes that Mr. Mitnick could have “signed his book contract any time during his father’s illness, ensuring himself of much-needed book advance money, but he didn’t. The book and the money was the last thing on his mind. Getting the right kind of care that would work in making his father’s last days as pain free as possible was his #1 priority. In my experience, this is not the behavior of a criminal personality. A criminal personality would have signed the book contract; taken the money; and blown off the publisher for months. Kevin never did that.” (Mitnick 5, p. 2)

35. Ms. Long also observed Mr. Mitnick’s behavior at the security conference. According to Ms. Long, Mr. Mitnick could have used his status as a former radio talk show to attend the conference for free (Mitnick 5, p. 2). Mr. Mitnick refused to do this, however, because, at the time of the conference, he was no longer an active member of the media and he wanted to register ‘by the book’ (Mitnick 5, p.2).

III. Proposed Conclusions of Law

36. The *HDO* requires the Commission to assess the effect of Mr. Mitnick’s criminal convictions on his qualifications to be and remain a Commission licensee. In assessing an applicant’s qualifications, the Commission seeks to predict whether he will be honest in his dealings with the Commission and will abide by the Commission’s rules and the Communications Act. *See Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986) (subsequent history omitted) (“*Character Policy Statement*”).⁹ As

⁹ Although the character policy arose in the context of broadcast licensing, the principles used to assess character apply to all decisions involving Commission authorizations. *See, e.g., Marc Sobel*, 17 FCC Rcd 1872, 1893-94 (2002), *recon. denied*, 17 FCC Rcd 8562 (2002).

discussed herein, the Bureau and Mr. Mitnick (“the Parties”) agree that, on balance, the evidence supports a conclusion that Mr. Mitnick has the requisite character qualifications, notwithstanding the seriousness of his convictions and the fact that the evidentiary hearing occurred while Mr. Mitnick was completing the final months of his probation.

37. The Commission considers various factors in determining whether an applicant possesses the requisite character qualifications to remain a licensee. In evaluating the weight of an applicant’s prior misconduct, the Commission will consider “the willfulness of the misconduct, the frequency of such behavior, and its currency,” as well as the seriousness of the misconduct, any efforts made to remedy the wrong, and the applicant’s record of compliance with Commission rules. *Character Policy Statement*, 102 FCC 2d at 1227-1228, para. 102. The Commission also recognizes that evidence of “rehabilitation is significant,” and the Commission will consider the following as indicia of rehabilitation: 1) whether the applicant has avoided any significant wrongdoing since the prior disqualifying misconduct; 2) the amount of time 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 misconduct. *Character Policy Statement*, 102 FCC 2d at 1228-1229, para. 105.

38. Mr. Mitnick’s convictions are serious, involving, as they do, fraud and deception in gaining access to computer systems, and additional fraud and deception in making cellular telephone calls, charged without authorization, to other people’s accounts (F. 5-6).¹⁰ Mr.

¹⁰“F. ___” refers to the paragraph number found in the Findings of Fact section.

Mitnick's criminal conduct was willful and spanned a period of seven years (F. 6-7).¹¹ The serious nature and duration of his criminally fraudulent activities directly implicate his propensity to obey the law, as well as his propensity to deal honestly with the Commission. Absent any significant mitigating factors, the Commission should not grant Mr. Mitnick's renewal applications. The record, however, contains ample and compelling evidence of Mr. Mitnick's rehabilitation, honesty, and propensity to obey the law.

39. In the instant case, Mr. Mitnick has taken several significant efforts to remedy the impact of his criminal conduct. First, Mr. Mitnick has forthrightly acknowledged his criminal activities, and he has paid \$4125 in court-ordered restitution to many of his victims (F. 5-7). Second, Mr. Mitnick has expressed remorse over his criminal activities, and he has apologized to several of his victims (F. 20-23, 25). Finally, Mr. Mitnick has shared with society his unique knowledge of computer security, with the intention of helping the government, the private sector, and the public protect against the type of computer crimes Mr. Mitnick perpetrated (F. 12-18). Based on the record, the Parties believe that the serious nature and duration of Mr. Mitnick's criminal activities have been mitigated by his efforts to remedy the impact of his crimes,.

40. Similarly, the Parties believe that Mr. Mitnick's post-prison behavior counterbalances the limited period of time Mr. Mitnick has had to establish his rehabilitation. Specifically, Mr. Mitnick's last criminal activity occurred more than seven years ago, just prior to his arrest in February 1995 (F. 6-7, 24). Mr. Mitnick, however, spent five of those seven years in prison, where his opportunity to commit additional crimes was essentially nil (F. 7). In fact,

¹¹ Mr. Mitnick was arrested in December 1988 for hacking into Digital Equipment Company's computers and was rearrested in February 1995 (F. 6-7). During that seven-year time span, Mr. Mitnick spent close to one year in prison.

Mr. Mitnick was still under federal supervision at the time of the hearing. Thus, although seven years have elapsed since his misconduct, Mr. Mitnick has had a relatively short time in which to demonstrate whether he has truly reformed. Nevertheless, the record indicates that Mr. Mitnick has undergone a significant transformation in that time period, as discussed below.

41. During the time when he was incarcerated, Mr. Mitnick was bitter and had what might be considered a “bad attitude” (F. 21). The “invincible” Mr. Mitnick had, after all, been apprehended and ultimately spent the first half of his thirties in prison. Upon his release from prison in January 2000, though, Mr. Mitnick was confronted with the mortality of his father, who had suffered a recent heart attack and then contracted a serious infection (F. 10). Mr. Mitnick spent a majority of the next 18 months caring for his terminally ill father and looking after his business until his father’s death in July 2001 (F. 11). It appears that at some point while caring for his father, Mr. Mitnick had an epiphany. As Mr. Mitnick testified, he became determined to “turn his life around” (F. 12).

42. There is ample external evidence that Mr. Mitnick has indeed turned his life around. Within months of being released from prison, Mr. Mitnick began a career as a computer security consultant. Senator Fred Thompson invited Mr. Mitnick testify before Congress on the topic of computer security, which Mr. Mitnick did in March 2000 (F. 13). Later that year, Mr. Mitnick consulted with the U.S. Commission on National Security (F. 14). Beginning in January 2001 and continuing throughout the year, Mr. Mitnick hosted a local radio talk-show dealing with the Internet (F. 15). Later that same year, Mr. Mitnick was asked by a client to provide expert testimony to the Nevada Public Services Commission on telecommunications network security, which he expects to do (F. 16). And at the end of 2001, Mr. Mitnick signed a contract with

Wiley & Sons to co-author a book on computer security (F. 17). Mr. Mitnick satisfied the terms of his contract and completed the book in June 2002 (F. 32).

43. David Hall, an experienced radio program executive and someone very familiar with FCC rules and regulations, arranged for Mr. Mitnick to host a talk-radio show for a year (F. 27-28). The show had some success, and Mr. Hall has left the door open to further negotiations with Mr. Mitnick regarding a nationally-syndicated talk-radio program hosted by Mr. Mitnick (F. 28). Mr. Hall noted that it would have been possible, even easy, for Mr. Mitnick to violate the terms of his probation by using a computer unsupervised, but Mr. Mitnick refused (F. 29). Based on these personal observations, Mr. Hall has no concerns about Mr. Mitnick's ability to deal with the Commission in an honest and forthright manner (F. 30).

44. Carol Long, a successful book editor, also gambled on Mr. Mitnick. She signed a contract with him to co-author a book, and he delivered it, on time (F. 32-33). Like Mr. Hall, Ms. Long had the opportunity to observe Mr. Mitnick's behavior for more than a year, and she has no doubt as to Mr. Mitnick's genuine rehabilitation (F. 34). Ms. Long notes that Mr. Mitnick could have legitimately used his status as a former member of the media and attended a conference for free, but Mr. Mitnick refused because he did not want to give even the appearance of impropriety (F. 35). Ms. Long also testified that, had Mr. Mitnick intended to con her, he easily could have done so (F. 34). Mr. Mitnick could have promised to write the book and accepted the advance, and then dragged his feet (F. 34). Mr. Mitnick chose to deal with her honestly, however, and did not sign the book contract until he knew he could devote the time necessary to honor his commitment (F. 34). Based upon these personal observations, Ms. Long is of the opinion that Mr. Mitnick is not likely to return to the ways that put him in jail (F. 34).

45. Within two and one half years of being released from prison, noteworthy members of the U.S. government, a prominent Los Angeles radio station, and a respected publisher gave Mr. Mitnick the opportunity to use his considerable computer expertise for the benefit of society. The individuals who worked with Mr. Mitnick were aware of his criminal past before they hired him. They nevertheless decided to take a calculated risk that Mr. Mitnick had decided to redirect his intellectual energies to legitimate purposes. Mr. Mitnick did not let them down.

46. Mr. Mitnick's probation officer, Mr. Hawley, provided the final testimony regarding Mr. Mitnick's rehabilitation. According to Mr. Hawley, Mr. Mitnick has "maintained total compliance" with the terms of his supervised release during the two years Mr. Hawley has supervised him (F. 24). This evidence, along with the testimony of Mr. Hall and Ms. Long, provide compelling evidence that Mr. Mitnick has redirected his considerable energy away from criminal activities and into productive, legal activities.

47. There is also sufficient evidence of Mr. Mitnick's current reputation for honesty. Mr. Hall and Ms. Long affirmed that Mr. Mitnick was honest (F. 30, 34). And Mr. Kasper, one of Mr. Mitnick's former victims and now a long-time friend and associate, believes that Mr. Mitnick has truly changed (F. 25-26). Finally, Mr. Mitnick's testimony during the hearing was candid and forthright. He did not equivocate when discussing the nature of his convictions, and he disclosed all information in response to queries regarding his criminal past and his amateur radio operations (F. 5-9).

48. One final area the Commission will consider in assessing an applicant's character is his overall history of compliance with Commission rules and regulations. Mr. Mitnick has been authorized to operate an amateur station for over twenty-five years (F. 9). Mr.

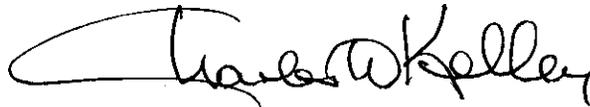
Hawley affirms that Mr. Mitnick has operated his ham radio without incident subsequent to his release from prison (F. 24). And although there is a single allegation of interference dating from 1984 (F. 9, note 6), there is nothing in the rest of the record to suggest that Mr. Mitnick has violated the Commission's rules. Mr. Mitnick has been using his radio regularly since his release (F. 9); given his notoriety and the amateur radio community's penchant for self-policing, we find it significant that there have been no complaints regarding his radio operations. The Parties thus believe that Mr. Mitnick has an overall record of compliance with the Commission's rules.

49. Based on the totality of the evidence, the Parties agree that Mr. Mitnick's post-prison conduct demonstrates his rehabilitation, notwithstanding the relatively short period of time since his release from prison. The Parties also agree that Mr. Mitnick can be relied upon to deal honestly with the Commission, and that he can be relied upon to comply with the Commission's rules and regulations.

IV. ULTIMATE CONCLUSIONS

50. Kevin David Mitnick committed serious crimes. However, he has paid his debt to society, both with five years of imprisonment and by apologizing and making restitution to many of the entities harmed by his crimes. The evidence indicates that he has experienced a dramatic change of attitude and is living the life of a responsible citizen. It is concluded, therefore, that he has been adequately rehabilitated and that he possesses the requisite character to remain a Commission licensee. Accordingly, the applications of Kevin David Mitnick for renewal of his amateur station and operator licenses should be GRANTED.

Respectfully submitted,



Charles W. Kelley
Chief, Investigations and Hearings Division
Enforcement Bureau



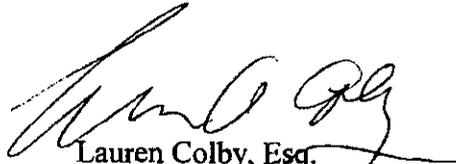
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September 19, 2002



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CERTIFICATE OF SERVICE

I, Karen Richardson, legal secretary of the Enforcement Bureau's Investigations and Hearings Division, certifies that copies of the foregoing have been filed by hand on this 19 day of September, 2002, to the offices of the following:

Honorable Richard L. Sippel
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Karen Richardson