

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

FILED/ACCEPTED
APR 17 2007
Federal Communications Commission
Office of the Secretary

In the Matter of) EB Docket No. 07-13
)
DAVID L. TITUS) FRN No. 0002074797
) File No. EB-06-IH-5048
Amateur Radio Operator and Licensee of)
Amateur Radio Station KB7ILD)

To: Richard L. Sippel
Chief Administrative Law Judge

ENFORCEMENT BUREAU'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS

1. The Enforcement Bureau pursuant to Section 1.325 of the Commission's Rules, requests that the Presiding Judge order David L. Titus ("Titus") to produce all of the documents requested in the Bureau's First Request for Production of Documents in an expeditious manner at the Commission's offices in Washington, DC.

2. On March 9, 2007, the Bureau served its First Request for Production of Documents on Titus. In its request, the Bureau sought just *two* categories of documents from Titus: (a) documents relating to each and every felony conviction of Titus; and (b) copies of all applications and correspondence filed by Titus with the Commission since January 1, 1997. On March 20, 2007, Titus served on the Bureau a pleading entitled, "David Titus' Responses and Objections to the Bureau's First Document Requests." In his pleading, Titus advanced several so-called "general objections. He did not produce *any* documents at that time. Following the pre-hearing conference in this proceeding,

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held on March 27,2007, the Presiding Judge directed Titus to respond to the Bureau's request for documents by producing the requested documents or, as warranted, advancing specific objections and/or providing a privilege log, by April 6,2007. *David L. Titus*, Order, FCC 07M-IO (rel. March 30,2007).

3. On April 3, 2007, Titus transmitted via email to the Bureau a response entitled, "David Titus' Specific Responses and Objections to the Bureau's First Document Requests." Therein, Titus advances several vague, unsupported objections and provides a mere four pages of documents.

4. The Bureau submits that Titus has not complied in whole or in part to its request for documents. Accordingly, the Presiding Judge should enter an order compelling Titus to comply with the Bureau request for documents as follows:

DOCUMENT REQUEST 1: This document request seeks copies of all documents relating to each and every felony conviction of Titus. Titus objects to this request on the basis that it seeks documents that are "protected by the work product doctrine and attorney client privilege, as well as documents not in Mr. Titus' but in third parties' possession, custody or control." Titus, however, produced a total of four pages of documents which he avers are "in his possession."

The Bureau submits that Titus' response to this particular document request is wholly inadequate. Titus does not provide *any* basis whatsoever for his claim that the documents sought are protected by either the work product doctrine or any privilege. **He** merely

provides a bare, unsupported assertion. Furthermore, even assuming, *arguendo*, that such documents were somehow protected by a privilege, Titus was and is under an obligation, pursuant to the Presiding Judge's March 30, 2007, order, to produce a "privilege log." Titus has produced no such log. In addition, Titus' objection -- that the Bureau's request **seeks** documents that are beyond Titus' possession, custody, and control -- is simply unsupportable. In its request for documents, the Bureau specifically defined the term "Document" and deliberately restricted such definition to include only those materials that are in Titus' possession, custody or control. For Titus to claim that the Bureau's request is somehow overbroad because it seeks documents that are beyond his possession, custody or control is, therefore, outrageous.

Even the documents that Titus has produced -- all four pages -- appear incomplete. Titus states in his response that he "will produce the pleadings which he has in his possession from his only felony conviction." However, none of the four pages of documents that Titus has produced consists of "pleadings." Moreover, Titus' response is unduly restrictive in that he only produces documents that he claims are in his "possession." He does not produce or even attempt to produce any responsive documents that are or may be in his "custody or control." He simply reads the latter two categories of potentially responsive documents out of the Bureau's definition of the term, "document."

Finally, Titus' offer to produce "non-privileged documents following the entry of a mutually agreed upon protective order" is ridiculous. There is no justification for withholding non-privileged documents from production. Additionally, if Titus desires to enter into a protective order, he ought to be required to do more than merely offer to

discuss the matter; rather, he should be required explain fully why such an order is necessary and to propose such an order.

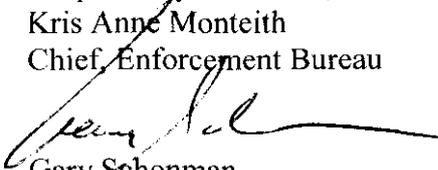
DOCUMENT REQUEST 2: This request seeks copies of all applications and correspondence that Titus has filed with or otherwise sent to the Commission since January 1, 1997. Titus objects to this particular request as “unduly burdensome and harassing because the Bureau has access to all such documents.” However, Titus asserts that “to the extent he locates any such documents, [he] will produce” them. This response is flagrantly unresponsive.

While the Commission may have some of the requested documents in its possession, it is unlikely that it has retained all such documents. In any event, Titus does not explain in any way, shape or form why responding to this document request would be burdensome for him. It is simply a bare, unsupported claim. Titus’ companion objection that the Bureau has interposed this document request in an effort to harass him is spurious. The Bureau does not engage in discovery for the deliberate purpose of harassing any party. Titus may be an unwilling participant in this license revocation proceeding, but he should refrain from inflammatory rhetoric in responding to legitimate discovery requests. Clearly, information about Titus’ filings with the Commission and the representations therein are legitimate areas of inquiry. Finally, Titus’ statement -- that he will produce responsive documents to the extent he locates any -- suggests that he has not even made an effort to search for any yet. Titus should be required to respond fully and completely to this document request.

PROCEDURAL INFIRMITIES: Titus responsive pleading also is procedurally defective. At the prehearing conference held in this proceeding on March 27, 2007, Titus' counsel was informed of his obligations to comply with Part 1 of the Commission's Rules, particularly those requiring that pleadings be properly served and captioned. Notwithstanding, Titus' pleading is not directed to anyone. In addition, Section 1.211 of the Commission's rules requires Titus to have included a proof of service with his pleading. Titus' pleading is devoid of such proof of service.

The Presiding Judge should carefully note the lengths to which Titus has gone in his purported responsive tiling to avoid cooperating in the discovery phase of this hearing proceeding. While the Bureau bears the burdens in this hearing, Titus nonetheless has an obligation to cooperate and respond fully, completely and in good faith to the Bureau's legitimate requests for information. Engaging in actions designed to frustrate the Bureau's efforts should not be tolerated.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau



Gary Schonman
Special Counsel, Investigations and Hearings Division



William Knowles-Kellett
Attorney, Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420
April 17, 2007

**ENFORCEMENT BUREAU'S
FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS**

MAR - 9 2007

Federal Communications Commission
Office of the Secretary

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

In the Matter of)	EB Docket No. 07-13
)	
DAVID L. TITUS)	FRN No. 0002074797
)	File No. EB-06-IH-5048
Amateur Radio Operator and Licensee of)	
Amateur Radio Station KB7ILD)	
To: David L. Titus		

**ENFORCEMENT BUREAU'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

The Enforcement Bureau ("Bureau"), pursuant to Section 1.325 of the Commission's Rules, 47 C.F.R. § 1.325, hereby requests that David L. Titus produce the documents specified herein for inspection and copying. Production shall be made at the offices of the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Suit 24-C330, 445 12th Street, S.W., Washington, DC 20554 (or at some other location that is mutually acceptable to the Bureau and David L. Titus) within 10 days of the date of this request.

Definitions and Instructions

- a. "David L. Titus" means David L. Titus, the Amateur Radio Operator and Licensee of Amateur Radio Station KB7ILD, FRN No. 0002074797
- b. "Document" means the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of variations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, videotaped, punched, computer-

stored. or graphic matter of every type and description, however and by whomever prepared, produced. disseminated, or made, including but not limited to any book, pamphlet. periodical, contract, agreement, correspondence, letter, facsimile, e-mail, file, invoice. memorandum, note: telegram: report, record, handwritten note; working paper, routing slip, chart, graph, photograph, paper, index; map, tabulation, manual, guide, outline. script. abstract, history, calendar, diary, agenda, minutes, marketing plan, research paper, personnel file, personnel folder: preliminary drafts: or versions of all of the above, and computer material (print-outs. cards: magnetic or electronic tapes. disks and such codes or instructions as will transform such computer materials into easily understandable form) in the possession: custody, or control of David L. Titus.

a c. "Relate to" and "relating to" mean constitutes, contains, embodies, reflects, identifies: states. refers to, deals with. concerns or in any way is pertinent to the specified subject, including documents concerning the preparation of the documents.

d. "All" shall be construed to include the word "any."

e. Each Document produced shall be identified by the number of the Document request to which it is responsive, and each Document shall be produced in its entirety, even if only a portion of that Document is responsive to a request herein. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices?tables, or other attachments, and all other Documents referred to in the Document or attachments. **All** written materials necessary to understand any Document responsive to these inquiries must also be produced.

f. If a Document responsive to any request herein existed but is no longer or nor currently available, or if David L. Titus is unable for any reason to produce a

Document responsive to any request. each such Document shall be identified by author, recipient, date, title, and specific subject matter; and a full explanation shall be provided why the Document is no longer available or why David L. Titus is otherwise unable to produce it.

g. If any Document produced in response to any request herein is not dated, the date on which the Document was prepared shall be provided. If any Document does not identify its author(s) or recipient(s), the name(s) of the author(s) or recipient(s) of the Document shall be provided.

h. This request is continuing in nature: requiring immediate production if a further or different Document responsive to any request herein comes into the possession, custody, or control of David L. Titus during the pendency of this proceeding.

i. If production of any Document responsive to any request herein called for by this request is refused pursuant to a claim of privilege; the Document shall be identified by reference to its author, recipient(s) (including any person receiving a copy, regardless of whether that recipient is listed on the Document), date, and subject matter. The basis for the privilege claimed for such Document shall be specified with sufficient precision to permit assessment of the applicability of the privilege involved.

Documents Requested

I. Copies of all documents relating to each and every felony conviction of David L. Titus.

3. Copies of all applications and correspondence that David L. Titus has filed with or otherwise sent to the Commission since January 1, 1997.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau



Gary Schonman
Special Counsel, Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D C 20554
(202) 418-1420

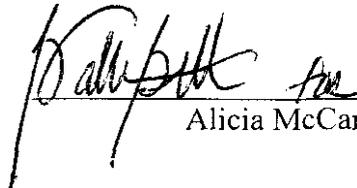
March 9 2007

CERTIFICATE OF SERVICE

Alicia McCannon, an Industry Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 9th day of March 2007, sent by first class United States mail copies of the foregoing "Enforcement Bureau's First Request for Production of Documents" to:

David L. Titus
1529 Boylston Avenue. #203
Seattle, WA 98122

Administrative Law Judge Richard L. Sippel*
Federal Communications Commission
445 12th Street. S.W.. Suite 1-C768
Washington. D.C. 20054



Alicia McCannon

* Hand-Delivered

**DAVID TITUS' SPECIFIC RESPONSES AND
OBJECTIONS TO THE BUREAU'S FIRST
DOCUMENT REQUESTS**

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In Re the Matter of:

DAVID L. TITUS,

Amateur Radio Operator and Licensee of
Amateur Radio Station KB7ILD.

EB Docket No. 07-13
FRN No. 0002074797
File No. EB-06-IH-5048

DAVID TITUS' SPECIFIC RESPONSES
AND OBJECTIONS TO THE BUREAU'S
FIRST DOCUMENT REQUESTS

GENERAL OBJECTIONS

Per the ORDER issued March 28, 2007, Mr. Titus is prepared to consult and enter into a mutually agreed upon protective order that will allow documents which contain information which is confidential and sensitive to be produced in a manner which respects their confidentiality.

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DAVID TITUS' SPECIFIC RESPONSES AND OBJECTIONS
TO THE BUREAU'S FIRST DOCUMENT REQUESTS
Page 1.

Law Office
DAVID S. MARSHALL
1001 Fourth Avenue, 44th Floor
Seattle, Washington 98154-1192
Telephone 206.826.1400
Fax 206.389.1708

RESPONSES TO SPECIFIC DOCUMENT REQUESTS

Request 1: Copies of all documents relating to each and every felony conviction of David L. Titus.

Mr. Titus objects to this request because it arguably requires production of documents protected by the work product doctrine and attorney client privilege, as well as documents not in Mr. Titus' but in third parties' possession, custody or control. Without waiving his objections, Mr. Titus further responds as follows:

Mr. Titus will produce the pleadings which he has in his possession from his only felony conviction. If Mr. Titus subsequently finds additional pleadings, those will also be produced. Mr. Titus has no other documents in response to this request in his possession. If he finds any: Mr. Titus will also produce any non-privileged documents following the entry of a mutually agreed upon protective order and produce a privilege log listing any documents that he withholds.

Request 2: Copies of all applications and correspondence that David L. Titus has filed with or otherwise sent to the Commission since January 1,1997.

Mr. Titus objects to this request as unduly burdensome and harassing because the Enforcement Bureau has access to all such documents. Without waiving his objections, Mr.

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Titus further responds as follows:

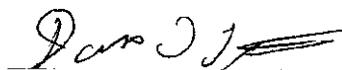
To the extent that he locates any such documents, Mr. Titus will produce.

DATED this 3~~1~~ day of April, 2007,



DAVID S. MARSHALL, WSBA No. 11716
STEVEN D. BROWN, WSBA #11759
Attorneys for David L. Titus

, DAVID L. TITUS, certify that the foregoing interrogatory answers are true and correct,



DAVID L. TITUS

Date 03, 07

signed at Seattle, Washington.

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AVID TITUS' SPECIFIC RESPONSES AND OBJECTIONS
TO THE BUREAU'S FIRST DOCUMENT REQUESTS
page 3.

Law Office
DAVID S. MARSHALL
1001 Fourth Avenue, 44th Floor
Seattle, Washington 98154-1192
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Fax 206.389.1708

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

STATE OF WASHINGTON,

NO. 93-1-00035-2

MAR 16 1993

Plaintiff,

E

Mark

vs.

JUDGMENT AND SENTENCE
PRISON

705972
4-22-93

DAVID L. TITUS.

DOB: 8/15/74

Defendant.

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GOV

This matter having come before the Court for a sentencing hearing this date; the defendant having been convicted by:

- (XX) his guilty plea on March 12, 1993, of
- () jury verdict on , of

Communication With a Minor For Immoral Purposes
RCW 9.68.090 - A Felony

committed on or about December 9, 1992 in Benton County, Washington; the defendant being present and represented by his attorney, Larry Zeigler; the defendant having been asked if he wished to make a statement on his own behalf and to present any information in mitigation of punishment; and the Court being fully advised, makes the following:

FINDINGS OF FACT

1. The defendant's prior convictions are:

Offense/Date	Disposition/Date
Ind. Liberties 11/1/65 (Juv.)	65 Weeks 4/16/86
Ind. Liberties 12/15/89 (Juv.)	65 Weeks 2/34/90

2. The presumptive sentencing range is as follows:

<u>Ct. #/Crime</u>	<u>Seriousness/Offender score</u>
Comm.w/Minor 22-29 years	III 6

3. The defendant's current multiple offenses

- () do not involve the same criminal conduct.
- () do involve the same criminal conduct.

4. The defendant was duly informed by special allegation and the court/jury finds/found that () defendant () an accomplice was armed with a deadly weapon as defined by RCW A.125 at the time of the commission of the offense in count(s) _____ and _____ months is to be added to the presumptive sentencing range.

JUDGMENT AND SENTENCE
PRISON

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5. The maximum ~~time~~ for the offense(s) is:

5 years and/or \$10,000 fine

6. The defendant owes restitution to the victim(s) in this case in the amount of \$_____. The following victims are entitled to restitution in these amounts:

TO BE DETERMINED WHEN COUNSELING COMPLETE VC 12626

7. The defendant has served 79 days in confinement before sentencing which confinement was solely in regard to the offenses) for which the defendant is being sentenced.

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the defendant and the subject matter.

2. The defendant is guilty of the crime(s) of:

Communication With a Minor for Immoral Purposes
RCW 9.68A.090 - a Felony

3. The defendant is a first time offender pursuant to RCW 9.94A.120(5) and the Court waives the imposition of a sentence within the presumptive sentencing range.

4. There are substantial and compelling reasons to justify an exceptional sentence. Findings are attached.

JUDGMENT AND SENTENCE

The Court having determined that no legal cause exists to show why judgment should not be pronounced, it is therefore ORDERED, ADJUDGED and DECREED as follows:

1. The defendant shall be sentenced to a term of 25 months confinement to be served pursuant to RCW 9.94A.190 commencing _____ concurrently consecutively with _____

2. Credit for 79 days served prior to this date is given.

3. The defendant **shall report** to and be available for contact with the assigned community corrections officer as directed upon release from prison.

JUDGMENT AND SENTENCE
PRISON

Rev. 2/92

(x) 4. The defendant shall be on community placement for a period of 24 months upon either release from confinement or transfer to Community custody. Conditions of community placement include that the defendant:

shall work at a Department of Corrections-approved education, employment, and/or community service;

shall not consume controlled substances except pursuant to lawfully issued prescriptions;

shall pay community placement fees as determined by the Department of Corrections;

(xx) shall not possess controlled substances;

(xx) shall not have any direct or indirect contact with Danny Suarez and his immediate family or children under the age of 16. Violation of this order is a criminal offense under RCW 10.99 or RCW 91A.46 and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony;

(xxj) shall participate in crime-related treatment or counseling services as directed by community corrections officer;

() shall not consume alcohol;

(xx) shall have prior approval of community corrections officer before selecting or changing residence location or living arrangements;

(xx) shall not peruse any explicit sexual material as defined by his therapist and/or community corrections officer;

(xx) shall submit to and pay for polygraph examinations as directed by his therapist and/or community corrections officer;

(xx) shall submit to and pay for plethysmograph examinations directed by his therapist and/or community corrections officer;

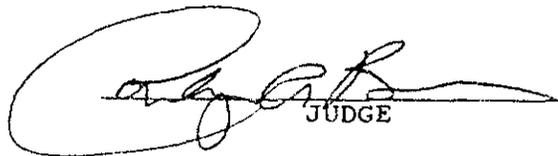
5. The defendant shall pay court costs in the sum of \$147.00; reimbursement of court appointed attorney fees of \$250.00; a penalty assessment in the amount of \$100.00 pursuant to RCW 7.68.035 and a fine of \$_____. Said sums to be paid to the Benton County Clerk, 7320 W. Quinault, Kennewick, Washington by cash, cashier's check or money order in payments as scheduled by the defendant's community corrections officer with full payment no later than 18 months pro future

JUDGMENT AND SENTENCE
PRISON

Rev. 2/92

6. The defendant shall make restitution as indicated in Findings of Fact #6 which shall be payable to the Clerk of Court, 7320 W. Quinault, Kennewick, Washington by cash, cashier's check or money order in payments as scheduled by the defendant's community corrections officer with full payment no later than _____
7. The court hereby retains jurisdiction over the defendant for a period of ten (10) years to assure payment of monetary obligations and the Department of Corrections shall be responsible for assuring defendant's compliance with this provision. To assure compliance, the defendant is ordered to report to the Department of corrections within 24 hours of **release** from confinement or date of **this** order to allow the Department of Corrections to monitor payment.
- xx) 8. Defendant shall not have contact with the victim(s) Danny Suarez and immediate family or minors under the age of 16 for a period of ten (10) years. Violation of this order is a criminal offense under RCW 10.99 or RCW **9A.46** and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony.
- xx) 9. Defendant shall submit to the custody of the Benton County Sheriff's Office for a blood draw for purposes of DNA identification and classification. The defendant shall not be released from the sheriff's custody until such blood draw is completed. Said blood draw shall be completed within seven (7) days of this order.
- xx) 10. Defendant shall submit to the custody of the Washington State Corrections for HIV testing, pretest and posttest counseling through the Washington State Department of Corrections.
- xx) 11. Within 30 days of release from custody the defendant shall provide the Benton County Sheriff's Office with his/her name, address, place of employment, crime for which he/she is convicted, date, and place of conviction, aliases used and social security number. If the defendant changes residences either within Benton County or outside of this county, he/she must provide this same information in writing to the sheriff in that county within 10 days of the move along with a copy to the sheriff with whom the defendant last registered. **A** violation of this order is a criminal offense and will subject a violator to arrest.

Done in open court this 10th day of April, 1993 in the presence of the defendant, his/her attorney and the Deputy Presecutor.


JUDGE

JUDGMENT AND SENTENCE
PRISON

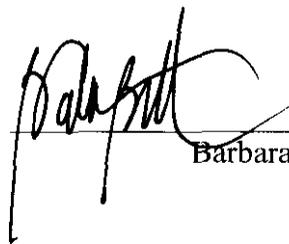
Rev. 2/92

CERTIFICATE OF SERVICE

Barbara Britt, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 17th day of **April** 2007, sent by first class United States mail copies of the foregoing "Enforcement Bureau's Motion to Compel Production of Documents" to:

Steven D. Brown, **Esq.**
Law Office of David S. Marshall
1001 4th Avenue, 44th Floor
Seattle, WA 98154
Counsel to David L. Titus

Chief Administrative Law Judge Richard L. Sippel*
Federal Communications Commission
445 12th Street, S.W., Suite 1-C768
Washington, D.C. 20054



Barbara Britt

* Hand-Delivered