

ORIGINAL

FILED/ACCEPTED

JUL 17 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 RESPONSE AND OBJECTIONS TO
DAVID TITUS' FIRST INTERROGATORIES TO THE ENFORCEMENT BUREAU**

1. On July 3, 2007, David L. Titus ("Titus") directed to the Enforcement Bureau ("Bureau") "David Titus' First Interrogatories to the Enforcement Bureau ("Interrogatories").¹ The Bureau, pursuant to Section 1.323(b), hereby responds and interposes the following objections to Titus' Interrogatories.

INTERROGATORY NO. 1: Identify each and every person with whom the Enforcement Bureau, or any of its agents or employees, has discussed David L. Titus.

The Bureau objects to this interrogatory on a number of grounds. The interrogatory is overbroad in that it contains no temporal limitations. Thus, it is unclear how far back in time it seeks information. The interrogatory also is vague and overbroad in that it seeks information about persons with whom the Bureau has "discussed" Mr. Titus without defining the term "discussed," thus potentially capturing, for example, fleeting, non-substantive exchanges in which Mr. Titus'

¹ Although Titus transmitted a copy of his Interrogatories to the Bureau via e-mail on July 5, 2007, he explicitly characterized the document so transmitted as a "courtesy" copy. The certificate of service accompanying Titus' Document Request indicates that he deposited a copy of his Document Request addressed to the Bureau in the U.S. Mail on July 3, 2007. Because Section 1.323 allows 14 days (including holidays) within which to interpose an

No. of Copies rec'd 0+6
List ABCDE

name may have been casually referenced, directly or indirectly, by any number of the numerous persons employed by or on behalf of the Bureau. The Bureau further objects to this interrogatory because it includes potential internal conversations among Commission employees and seeks information about communications protected by the deliberative process, work product, and attorney client privileges. Notwithstanding these objections and in the interest of full cooperation, Bureau counsel hereby represents that, during the investigation in preparation for this hearing proceeding, it engaged in conversations relating to Mr. Titus with the following persons:

- 1) An unidentified person at the Washington State Bureau of Corrections.
- 2) Detective Bob Shilling
Seattle Police Department
610 5th Ave., Unit 792
PO Box 34986
Seattle, WA 98124-4986
206-684-5588
- 3) John Shurman
12057 NE 97th St.
Kirkland, WA 98033
425-827-0430
- 4) David Condon
12906 113th Pl NE
Kirkland, WA 98034
- 5) Art Tanaka
11410 NE 124th St #354
Kirkland, WA 98034-4399
206-818-6722
- 6) David C. Roddy
12325 Dogwood Trail
Gloucester, VA 23061
804-693-3990

objection, the Bureau's instant pleading is required to be filed on or before July 17, 2007. Accordingly, the Bureau's instant pleading is timely.

INTERROGATORY NO. 2: Identify all persons holding Amateur Radio Station and Amateur Radio Operator License whom the Enforcement Bureau has obtained an Order to Show Cause to revoke their license in light of their felony convictions or other misconduct pursuant to the Commission's 1990 Character Order (as defined in footnote 4 of the Order to Show Cause issued in this case), and, for each such person, further identify:

- A. The cause number of their proceeding;**
- B. Their attorneys;**
- C. The documents and other public records related to their proceeding; and**
- D. The ultimate disposition of their proceeding.**

The Bureau objects to this interrogatory on the grounds that it calls for the Bureau to perform legal research for Mr. Titus. The Commission's discovery processes do not contemplate that one party may require another to perform such research. Because this interrogatory is outside the scope of permissible discovery, the Bureau objects to this interrogatory. In addition, the interrogatory would require the Bureau to search for and identify Commission records, a process which also is beyond the scope of permissible discovery in hearing proceedings. As indicated in Section 1.325(b) of the Commission Rules, persons seeking information involving Commission records must avail themselves of the Freedom of Information Act, as implemented in Sections 0.460 and 0.461 of the Commission's Rules.

INTERROGATORY NO. 3 Identify the location of all documents related to the Enforcement Bureau's license revocation proceedings against Kevin Mitnick:

The Bureau objects to this interrogatory because it would require the Bureau to search for and identify Commission records, a process which is beyond the scope of permissible discovery in hearing proceedings. As indicated in Section 1.325(b) of the Commission Rules, persons seeking information involving Commission records must avail themselves of the Freedom of Information Act, as implemented in Sections 0.460 and 0.461 of the Commission's Rules. The Bureau also notes that various documents relating to the license revocation proceeding involving

Kevin Mitnick are routinely available to the public through appropriate legal research. The Bureau should not be required to perform such research for Mr. Titus.

INTERROGATORY NO. 4: Specify the date when the Enforcement Bureau contends that David L. Titus first became a Commission licensee.

The Bureau has no basis at this time for disputing the veracity of the particular date, August 14, 1989, that Mr. Titus represented to the Bureau in his answers to interrogatories in this proceeding.

INTERROGATORY NO. 5 Identify by call sign and service each and every FCC license that David L. Titus has ever had or has had any interest of any kind whatsoever.

The Bureau is presently aware that Mr. Titus is the licensee of Amateur Radio Station KB7ILD, and he was the licensee of a General Mobile Radio Service license, call sign WPQL442 (status expired). The Bureau objects to that portion of the interrogatory which seeks information about any "interest" in any FCC license held by Mr. Titus on the basis that it is vague and overbroad. Because the term "interest" is not defined, the interrogatory could be interpreted as including, for example, de minimis ownership of shares of stock in publicly traded licensees, such as broadcasting or telecom companies, of which the Bureau is unaware. It is unclear, in any event, how such information could be construed as being reasonably calculated lead to the discovery of admissible evidence.

INTERROGATORY NO. 6: Describe fully each instance of FCC-related misconduct which the Enforcement Bureau contends supports its claim that David L. Titus engaged in FCC-related misconduct.

The Bureau objects to this interrogatory because it is beyond the scope of the particular issues specified in the Order to Show Cause in this hearing proceeding. None of the issues in this proceeding relates to alleged or suspected violations of any specific Commission rules by Mr.

Titus, and the Bureau is unaware at this time of any history of such FCC-related misconduct by him. In the event the Bureau discovers facts which raise material and substantial questions as to whether Mr. Titus has or is engaged in FCC-related misconduct, it will move to enlarge the issues in this proceeding, as appropriate.

INTERROGATORY NO. 7: Identify all documents which the Enforcement Bureau contends supports its claim that David L. Titus has engaged in FCC-related misconduct.

See the Bureau's objection to Interrogatory No. 6. In addition, the Bureau objects to this interrogatory on the basis that it requires the Bureau to search for and identify Commission records and thus is beyond the scope of permissible discovery. See Section 1.325(b). Requests for information about Commission records must be filed pursuant to the Freedom of Information Act in accordance with Commission's rules adopted thereunder.

INTERROGATORY NO. 8: Specify in full detail each occasion on which "the Commission has consistently applied these character standards to applicants and licensees in the Amateur Radio Service" (as set forth in the Order to Show Cause in this Action).

The Bureau objects to this interrogatory on the basis that it requires the Bureau to perform legal research for Mr. Titus and thus is beyond the scope of permissible discovery. The occasions in which the Commission has applied its character standards in the Amateur Radio Service would be reflected in Commission cases, copies of which are routinely available to the public through appropriate legal research. The Bureau further objects to this interrogatory because that it requires the Bureau to search for and identify Commission records without following the procedures specified in Section 1.325(b) of the Commission's Rules, which requires such requests to be filed pursuant to rules adopted pursuant to the Freedom of Information Act.

INTERROGATORY NO. 9: Identify all facts which the Enforcement Bureau believes supports its contention that "amateur radio service is particularly attractive to children" (as set forth in the Order to Show Cause in this action).

The matter of amateur radio's appeal to children is not an issue in this proceeding which the presiding judge has been directed to resolve, and the Bureau objects to any effort to place such matter in dispute. Nevertheless, there is variety of information available to the public on the internet and elsewhere supporting the fact, of which the presiding judge may take official notice, that amateur radio is indeed a hobby which is, and throughout its long history has been, attractive to individuals of all ages, particularly youngsters. *See, e.g.,* www.kidshamradio.com; www.arrl.org/FandES/tbp/Hill.pdf; www.scout.org/jota.

INTERROGATORY NO. 10: Identify all documents which the Enforcement Bureau contends support the contention set forth in Interrogatory No. 9.

The Bureau objects to this interrogatory because it would require the Bureau to search for and identify Commission records, a process which is beyond the scope of permissible discovery in hearing proceedings. As indicated in Section 1.325(b) of the Commission Rules, persons seeking information involving Commission records must avail themselves of the Freedom of Information Act, as implemented in Sections 0.460 and 0.461 of the Commission's Rules.

INTERROGATORY NO. 11: Identify each and every person upon whom the Enforcement Bureau intends to rely, if any, as a reference against David L. Titus' character in the proceeding in EB Docket 07-13.

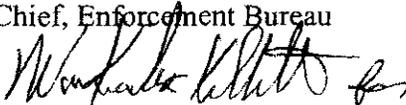
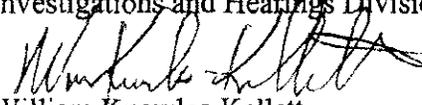
The Bureau objects to this interrogatory because it requires the Bureau to prematurely present information about its direct case. Furthermore, the Bureau has not yet developed a comprehensive witness list, and therefore it is unable at this time to identify "each and every person" it intends to call for direct testimony. In the spirit of cooperation, however, the Bureau is able to represent at this time that it may call Mr. Titus and Detective Schilling (see response to Interrogatory No. 1), among others to testify regarding Mr. Titus' character.

INTERROGATORY NO. 12: Identify all documents, witness statements, affidavits, and declarations which the Enforcement Bureau has obtained related to David L. Titus.

The Bureau objects to this interrogatory because it would require the Bureau to search for and identify Commission records, a process which is beyond the scope of permissible discovery in hearing proceedings. As indicated in Section 1.325(b) of the Commission Rules, persons seeking information involving Commission records must avail themselves of the Freedom of Information Act, as implemented in Sections 0.460 and 0.461 of the Commission's Rules.

INTERROGATORY NO. 13: State all facts upon which the Enforcement Bureau intends to demonstrate in the hearing proceeding in EB Docket No. 07-13 that David L. Titus has not been rehabilitated and describe fully the evidence upon which the Enforcement Bureau intends to rely in making such demonstration.

The Bureau objects to this interrogatory because it requires the Bureau to prematurely present information about its direct case. Furthermore, the Bureau has not yet developed "all facts" upon which it intends to rely at hearing.

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

July 17, 2007

CERTIFICATE OF SERVICE

William Knowles-Kellett, counsel for the Enforcement Bureau in the captioned matter, certifies that he has, on this 17th day of July 2007, sent by first class United States mail copies of the foregoing "Enforcement Bureau's Response and Objections to David Titus' First Interrogatories to the Enforcement Bureau" 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



William Knowles-Kellett

* Hand-Delivered