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FCC Mail Room

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

In re Application of	)	WT Docket No. 08-20
	)	
WILLIAM F. CROWELL	)	FCC File No. 0002928684
	)	
Licensee of Station W6WBJ in the Amateur Radio	)	
Service for Renewal of Station License	)	
	)	
WILLIAM F. CROWELL	)	
	)	
For Renewal of Amateur Radio Advanced Class	)	
Operator License	)	

To: **Marlene H. Dortch, Secretary**  
**Federal Communications Commission**

Attn: **Arthur I. Steinberg**  
**Administrative Law Judge**

**APPLICANT'S PETITION TO PERMIT HIM TO APPEAR AT ALL PRE-  
HEARING CONFERENCES BY SPEAKERPHONE**  
**[47 C.F.R., Part I, Subpart B, § 1.248(f)]**

Applicant-licensee WILLIAM F. CROWELL hereby requests of the Presiding Officer herein, the Honorable Administrative Law Judge Arthur I. Steinberg, permission to appear at the April 2, 2008 pre-hearing conference, and at all pre-hearing conferences which may be later scheduled herein, by speakerphone.

This is an extremely complex case involving a large number of substantial, important and previously-undecided issues concerning the Amateur Radio Service.

At the present time I intend to raise the following issues at the hearing herein:

1. Whether or not the Enforcement Bureau ("Bureau") engaged in bad-faith enforcement with respect to my renewal.
2. Whether or not the Bureau engaged in incompetent enforcement with respect to my renewal.
3. Whether or not the Bureau engaged in illegal enforcement with respect to my renewal.
4. Whether the Bureau's attempted denial of my renewal violates my free-speech rights.
5. Whether the Communications Act requires a "broadcast" before the Bureau has the right to regulate claimed "indecentcy".
6. Whether the Commission was required, under the Administrative Procedures Act, to articulate a sufficient rationale prior to changing its policies toward the amateur radio service concerning the following issues:
  - a. With respect to changing from a "self-policing" amateur service enforcement regime to a "S.C.A.R.E." enforcement regime.
  - b. With respect to the adoption of the Bureau's ultra vires "Code of Conduct".
  - c. With respect to changing from a "benign" indecency enforcement regime to a "strict" enforcement regime in the amateur radio service.
  - d. With respect to creating a "safe harbor" for indecent transmissions by broadcast licensees while creating no such safe harbor for radio amateurs.
7. Whether the attempted non-renewal of my amateur service license is based on an illegal, unauthorized, vague, subjective and whimsical "Code of Conduct" promulgated by the Bureau under color of law, but which has no force or effect at law.

8. Whether, in renewal proceedings, the Bureau is entitled to *actively solicit* complaints against licensees without fatally compromising its impartiality therein (Washington Post television stations v. FCC and Nixon, 1974).

9. Whether or not Bureau employees were acting within the scope of their employment and authority in taking their alleged illegal actions against me.

10. Whether or not I was entitled to point out legal and factual deficiencies in the notices I received from the Bureau without thereby evincing so-called "bad character".

11. Whether 47 C.F.R., Part I, Subpart D (hereinafter "Part 97), §97.1 provides any specific regulatory authority to the Bureau.

12. Whether or not the alleged incidents of "intentional interference", "indecent transmissions" and "intentional playing of music" actually occurred.

13. Whether the offense of "intentional interference" requires a *substantial* interruption of communications to have occurred or, on the other hand, only a de minimus or insubstantial interruption.

14. In a case where one amateur station orders another amateur station to leave the frequency, what standards does the Commission apply in determining whether there was intentional interference under §97.101(d), or whether the "complaining" station was instead guilty of a violation of §97.101(b) by refusing to share the frequency?

15. Whether one amateur service operator has the right to deny the use of any frequency to another amateur service operator merely because the first operator feels that the speech of the other operator is "unsolicited and unwanted".

16. What the Bureau means by "imaginary and make-believe transmissions".

17. Whether one amateur service operator has the right to deny the use of any frequency to another amateur service operator merely because the first operator refuses to "acknowledge" the other operator.

18. Whether it is consistent with §97.101(b) for one amateur station to order another amateur station to leave the frequency merely because he was "there first".

19. Whether, merely because one amateur service licensee orders another such licensee to leave the frequency, the second station is guilty of "intentional interference" if he refuses to accede to the demand of the first station by refusing to leave the frequency.

20. Whether it is legally permissible for the Bureau to threaten me with prosecution under Title 18 of the U.S. Code, §1001 and Title 47 of the C.F.R., §1.17 if the Bureau did not deem me to be sufficiently candid in my replies to the Bureau, and then attempt to deny renewal of my license on the theory that I was *too candid* in said replies.

21. Whether or not I have "bad character" within the meaning of the Commission's so-called "character rule".

a. Whether the Bureau can use my strictly legal behavior to prove "bad character".

b. Whether the Bureau can use my strictly legal activities on the internet to prove "bad character".

c. Whether I was entitled to avail myself of my right of reply to the illegal defamation by Bureau employees.

22. Whether, in a renewal case in which the Bureau proposed to deny renewal on the basis of "intentional interference", actual intercepts of the alleged interfering transmissions violating Part 97 are necessary for the Bureau to satisfy its burden of proof.

a. Can such intercepts be made by any person, or only by Commission staff or "Official Observers"?

b. Has the Commission properly certified "Amateur Auxiliary" organizations within the meaning of Title 47 of the U.S. Code, §154(f)(4)(G) by seeking to

achieve a broad representation of individuals and organizations interested in amateur station operation?

23. Whether my August 31, 2000 reply to the Bureau was really “irrelevant and frivolous”, as the Bureau claims, or in so characterizing it, was the Bureau simply playing “kill the messenger” because I candidly informed the Bureau that its position was incorrect and incompetent?

24. Since they had no evidence to the contrary, whether it constituted arbitrary and capricious regulatory behavior by the Bureau to reject my denials of the matters alleged in the Bureau’s warning notices.

25. Whether, under Red Lion Broadcasting v. F.C.C., 395 U.S. 367 (1969) and its progeny, and particularly in view of the facts that the amateur radio service is non-pecuniary in nature as a matter of law, no exclusive frequency assignment accompanies the license grant and amateur operators are prohibited from broadcasting, does the Bureau have the right to regulate so-called “indecent” in the amateur radio service?

26. Does it represent arbitrary and capricious regulatory conduct per se for the Bureau to create a “safe harbor” for broadcasters to transmit indecent materials while simultaneously prohibiting amateur service operators from transmitting indecent materials *at any time*?

27. Whether authority was properly delegated to the Deputy Chief of the Mobility Division of the Wireless Telecommunications Bureau (hereinafter “Deputy Chief”) to issue the Hearing Designation Order (hereinafter “H.D.O.”) herein.

a. I claim that, in bad faith, the Bureau failed to inform the Deputy Chief that it was guilty of bad-faith enforcement.

b. I claim that, in bad faith, the Bureau failed to inform the Deputy Chief that, in rejecting my renewal application, it was unconstitutionally attempting to limit my free-speech rights.

c. I claim that, in bad faith, the Bureau failed to inform the Deputy Chief that it was trying to enforce an ultra vires and illegal so-called "Code of Conduct" for radio amateurs that is overly vague, totally subjective, whimsical in that it changes from day to day, and has absolutely no force and effect of law.

d. I claim that, in bad faith, the Bureau failed to inform the Deputy Chief that it was guilty of arbitrary and capricious regulatory activity by failing to create an indecency "safe harbor" for amateur radio operators.

e. I claim that, in bad faith, the Bureau failed to inform the Deputy Chief that it had presented me with a "Hobson's choice" by requiring me to be totally candid in my replies to the Bureau, and then trying to deny renewal of my license because, in effect, I had been "too candid" to suit the Bureau's liking.

f. I claim that, in bad faith, the Bureau failed to inform the Deputy Chief that at least two of the complainants against me had withdrawn their complaints; that said complainants had informed the Bureau that they were pressured into filing said complaints by radio personality Art Bell and his sycophants; and that, contrary to their original complaints, they did not believe that I had ever engaged in intentional interference.

g. I claim that, although for a period of almost two years she refused to request issuance an H.D.O. because she knew the case against me lacked merit, the Chief of the Enforcement Bureau finally agreed to request an H.D.O. from the Deputy Chief not because the case had any legal merit, but instead only because one member of her staff threatened to retire if she did not do so, and she could not find any other Bureau employee to fill the position.

28. Whether the Bureau's attempt to deny my renewal constitutes a content-based restriction on my on-the-air speech, which is presumed to be invalid, and the Commission bears a "heavy burden" of showing its constitutionality.

29. Whether the Bureau's attempt to deny my renewal, based on my exercise of my free-speech rights, constitutes an illegal limitation on the exercise of my free-speech as being unconstitutionally vague.

30. Whether the Bureau's attempt to deny my renewal, based on my exercise of my free-speech rights, can survive strict scrutiny, since no compelling governmental interest is served thereby, and it would not constitute the least restrictive means of serving the Bureau's asserted interest.

31. Whether the Bureau's attempt to deny my renewal, based on my exercise of my free-speech rights, would necessarily rely on prohibited criteria.

32. Whether, on renewal, the Bureau has the right to judge the social value of my speech.

33. Whether the Bureau's attempt to deny my renewal, based on my exercise of my free-speech rights, constitutes prohibited censorship within the meaning of Title 47 of the U.S. Code, §326.

34. Whether or not the Bureau employs a method of screening complaints against licensees to see if they rise to the level of a Part 97 violation or, on the other hand, decides whether or not to oppose an amateur service renewal merely based on the *number* of complaints received by the Bureau.

35. Whether or not the Bureau often receives invalid complaints and false recordings and complaints from radio amateurs.

36. Whether, as previously found by the Bureau, "jammers" often play recordings of licensed amateurs in an attempt to make it appear that the licensed amateur is doing the jamming.

37. Whether or not the Bureau's failure to seek modification, suspension or revocation of my amateur service license during its term evinces the Bureau's bad faith in the proceedings.

38. Whether the Bureau can assert the Commission's exemption from discovery contained in Commission Rule 1.325(a) ["any party *except* the Commission"; 47 CFR Part 1, subpart B, §1.325(a)] when the documents sought disclose, on their face, ultra vires acts presumably without the course and scope of the employment of the Bureau employee involved.

Since most or all of these issues are ones of first impression for the Commission and the Amateur Service, they will all need to be fully and carefully briefed.

On February 26, 2008 I propounded 133 Interrogatories to the Bureau in an attempt to clarify these issues, but I have not yet received the Bureau's responses.

If the Bureau were to object to some of my interrogatories, it would then become necessary for me to file a Motion To Compel Answers thereto, pursuant Title 47 of the Code of Federal Regulations, Part I, Subpart B, §1.323(c).

I won't be able to properly or correctly brief the numerous complicated and difficult issues herein until I have completed discovery. In order to research these issues properly, I must travel to the law library at the McGeorge University School of Law in Sacramento, California, which is about a 50-mile drive each way. The reason I must do so is that the McGeorge law library is the nearest law library to my residence that has the FCC Record and FCC Reports volumes, and will allow me to browse the stacks. Although a couple of state law libraries are closer, they won't let me browse the stacks and you can't keep asking the librarian to retrieve volume after volume. Therefore it is necessary for me to travel to the McGeorge law library and sit on the floor while I research these issues, since they don't have any chairs or desks in the stacks.

After completing discovery, I plan to file a Motion to Enlarge, Change or Delete Issues pursuant to Title 47 of the Code of Federal Regulations, Part I, Subpart B, §1.229.

Based on the foregoing, I anticipate that several pre-hearing conferences may well be necessary herein before this matter is ready to be set for a hearing.

While I am perfectly willing to travel from California, where I reside, to Washington, D.C. to attend the eventual hearing herein, I can't really afford to travel to Washington, D.C. for each pre-hearing conference that may be necessary.

Moreover, I am a practicing attorney, and being required to travel to Washington, D.C. for all of the pre-hearing conferences herein would substantially impair my relationship with my clients because it would disrupt my ability to perform work for them and to thereby adequately represent their interests.

In addition, I am the sole support of my family, and being required to travel to Washington, D.C. for all of the pre-hearing conferences which I believe will be necessary herein would substantially reduce my earnings and would probably prevent me from supporting my family properly.

I do not believe it would cause any hardship or unfairness to either the Commission, the Department of Administrative Law Judges or to the Bureau if the Presiding Officer were to permit me to appear at all pre-hearing conferences herein by speakerphone.

Based on the foregoing, I respectfully request that the Honorable ALJ Steinberg permit me to appear at all pre-hearing conferences herein by speakerphone.

I declare under penalty of perjury that the foregoing is true and correct, and that this Petition is signed on March 21, 2008 at Diamond Springs, El Dorado County, California.

Respectfully submitted,

  
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William F. Crowell  
Applicant-licensee

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**PROOF OF SERVICE BY MAIL**  
**[47 C.F.R. Part I, Subpart A, §1.47]**

I am a citizen of the United States and a resident of El Dorado County, California. I am the Applicant-licensee herein. I am over the age of 18 years. My address is: 1110 Pleasant Valley Road, Diamond Springs, California 95619-9221.

On March 21, 2008 I served the foregoing Petition To Appear At Pre-hearing Conferences By Speakerphone on all interested parties herein by placing true copies thereof, each enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box at Diamond Springs, California, addressed as follows:

Office of the Secretary, Federal Communications Commission  
Attention: ALJ Steinberg  
445 - 12<sup>th</sup> Street S.W., Washington, D.C. 20554  
*(original and 6 copies)*

Kris Monteith, Chief, Enforcement Bureau, Federal Communications Commission  
445 - 12<sup>th</sup> Street, SW, Room 7-C723, Washington, D.C. 20554

Rebecca A. Hirselj, Ass't. Chief, Investigations & Hearings Division, Enforcement Bureau  
F.C.C., 445 - 12th Street, S.W., Room 4-A236, Washington, D.C. 20554 (Bureau Counsel)

I further declare that, on this same date, pursuant to footnote 1 of the February 14, 2008 Order of Chief Administrative Law Judge Sippel, I faxed a copy of the foregoing document to the Office of Administrative Law Judges at (202) 418-0195.

I declare under penalty of perjury that the foregoing is true and correct, and that this proof of service was executed on March 21, 2008 at Diamond Springs, California.

  
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William F. Crowell