

saying that I am going to assert your forgetfulness, or refusal to honor your own agreement, as another example of your mistakes, lack of competence and lack of credibility. You're simply trying to do too much enforcement, too fast because you're trying to please the brownshirts and to overcompensate for the 20 years when the Commission told us hams that we were "self-policing", and meanwhile did no enforcement whatsoever, and you're trying to make me pay the price for your own career-climbing and failure to enforce the rules during that period! And I don't appreciate it one bit! I have no intention of being your scapegoat!

Next, there is the 3830 situation. Apparently someone has sent you a tape of my transmissions on that frequency, although I can't imagine why, and you rather pointedly did not volunteer the information in our telephone conversation. The short answer to your Warning Notice is that my transmissions on 3830 are not only specifically permitted under Section 97.1 of Part 97, the "Basis and Purpose" section of the amateur rules, but they are precisely the kinds of transmissions envisioned as being necessary and appropriate under §§97.111(a) and (b). I was making interesting conversation in all of my transmissions, and such transmissions both contribute to the advancement of the radio art under §97.1(b) and advance my skills, and those of my fellow amateurs, in the communications phase of the art within the clear meaning of §97.1(c). Furthermore, I was helping to expand the existing reservoir of operators in the amateur service, as §97.1(c) tells us we *should* do, because too many boring QSO's on 75 meters are driving licensees out of the hobby. If you take me to a hearing, I am going to present evidence about how boring 75 meters is, and how I was providing a worthwhile alternative to that boredom. This is *encouraged by* §97.1, and therefore clearly does not constitute a violation thereof, as you wrongfully claim! The only problem is, if you force me to put on a lot of evidence about how boring and underutilized 75 meters is, it is going to redound to the injury of the amateur radio service because I will make sure that other radio services hear about it, and they will jump on that testimony as a means of bolstering their arguments that *they* should have the frequencies instead. If you take me to an administrative hearing, I am going to contact representatives of the other radio services and invite them to attend the proceedings so they can see how you've screwed up the amateur radio service, because at this point I'm starting to think that they really do deserve the frequencies more than hams do, and your mismanagement of the amateur service is something they should know about in making their arguments for frequency re-allocation. So any further enforcement action that you may take against me in this matter is really going to hurt ham radio, and if it does, you have only yourself to blame.

Let me object here to your rather unremitting attempts to argue, in just about all your enforcement cases and your cheap shot, form letter warning notices, that §97.1 somehow gives the Commission the authority to regulate hams' free-speech rights on the radio. This wrong-headed litany of yours, besides having become extremely monotonous and boring to me, is just another example of your misinterpretation of Part 97, and of how you unfairly throw your weight around, by coming down on hams with the full power of the federal government and the U.S. Attorney's office, on another one of your cockamamie regulatory theories! And you do it because you want to keep the brownshirts happy, you want to get promoted, you want to be able to issue more press releases, and you know that hams are very unlikely to be able to successfully challenge your actions!

Section 97.1 gives the Commission no regulatory power vis-à-vis free speech! It is merely the general "Basis and Purpose" section of the Rules, and I really resent your acting as if it gives you the power to regulate our free speech! As far as I am concerned, it just represents another example of the federal government trying to abuse its power, throw its weight around, and bluff the public into submission with its power. So I am placing you on notice now that if you take me to an administrative hearing in this matter, another issue I am going to raise is *to whom §97.1 grants rights*. My position is that it grants rights only to licensees, not the Commission. Indeed, §97.1 forms the primary basis for my defense to your unfounded allegations. My transmissions on 3830 were *affirmatively permitted* by §97.1, and you don't have any regulatory power under §97.1 to tell me that they were wrong! And even if you did have such regulatory power, the language of §97.1 is so vague that it could not constitutionally be applied to regulate hams' free-speech rights. Clearly under §97.113(a)(1), your regulatory power comes exclusively from §§97.113, not from §97.1 You have to have an actual Rules violation in order to prevail in administrative proceedings, and you just don't have one in my case. Bernard J. Winner v. FCC (1980) 82 FCC 2d 343 and Walter Norman Russell v. FCC (1983) PR Docket Nos. 79-322 through 79-324.

Under your perverted enforcement theory, you can punish hams under the general "Basis and Purpose" rubric of §97.1, even though there is no Rules violation, which is totally contrary to Winner, Russell and §97.113(a)(1)! Hams *are entitled to know* to what extent the Commission can legally restrict our free-speech rights, so we can govern our speech accordingly, and §97.113 is the only section of Part 97 that allows you to do so. And Riley, you can tell me until you're blue in the face, like you've told so many other licensees to whom you've sent your cheap shot form letters, that I am "seriously misinformed" about the meaning

of §97.1, but I'm telling you right now that I've already done the research and can prove that both the law and the legislative history of §97.1 are against you!

In determining the free-speech rights of ham radio operators, any court is going to apply the specific language of §97.113 and not the very vague and general language of §97.1. That is an elementary principle of statutory construction as it affects citizens' free-speech rights. (I am going to omit the citations in this regard at this time, because I am sure you are familiar with them.) Indeed, the plain language of §97.113(a)(1) requires that there must be some *specific* prohibition against the conduct in question, not merely some vague and generalized alleged "violation" based upon the "Basis and Purpose" language as is found in §97.1, before any enforcement action will lie on your part. Do you want a court to finally and definitively determine that you have no enforcement power at all under §97.1, because I'm going to push that issue *hard* if you're going to treat me so unfairly!

So, in order for any enforcement action to lie under Part 97, the act complained of must be specifically prohibited by §97.113 or some other Section of Part 97. [Again, please see §97.113(a)(1)] The problem with your case is that I committed no such act. Now you say you have some tapes of me. Send them on over! I'd really like to hear them! I've *never* said *anything* on the ham radio that I was ashamed of, Riley, so I'd be glad to have an ALJ listen to what I said and then decide whether your admitted insanity was temporary or permanent. As I've mentioned, I will put my credibility and integrity up against yours any day of the week, my friend, with no problem at all. And, let me point out to you again, my transmissions were *specifically authorized* by Part 97, so you are really 'way off base in issuing me a Warning Notice!

In addition to being specifically authorized by §97.1, as discussed above, my transmissions were *also* authorized under §97.111 as being ones necessary to exchange messages with other stations in the amateur service! In other words, my transmissions were *exactly* the kinds of transmissions that are envisioned as necessary and appropriate under the Rules, but you are trying to second-guess everything I've said on 3830 and punish me because you don't like the substantive content of my speech! I have absolutely no intention of tolerating that. Any attempt by you to try to force me to change frequencies, or to stop using any assigned frequency on which I have the right to operate, would constitute a content-based restriction on my free-speech rights, would be unconstitutionally vague and would therefore warrant strict scrutiny by the courts. There would also be a violation of §326, the anti-censorship provision of the Communications Act [47 USC §326 (1970)] because you would be restricting the content of amateur

radio transmissions without justification, and this would give rise to a civil rights violation. I am going to pursue such an action if you don't rescind my Warning Notice.

There is also long-standing case law, in a highly-analogous Part 95 case, that the Commission can only prohibit a certain type of conversation over a particular frequency when the alternative would be to deny many intended users any access to the frequency. Lafayette Radio Electronics Corp. v. U.S. 345 F.2d 278, 280 (2<sup>nd</sup> Cir., 1965) (*love that Second Circuit!*). Even a cursory analysis of the elements of the Lafayette Radio decision demonstrates that the facts in our case militate in my favor and against the position of your complainant: after all, if I am allowed to stay on the frequency, everybody can use it. But if you allow your complainant to dictate who can use the frequency, then I am totally barred from its use and the other hams who want to talk to me cannot do so. Such a decision would violate Lafayette Radio. Riley, you should have considered the effect of the Lafayette Radio case before you issued me your cheap shot Warning Notice! Now I fear that I am going to have to raise this as another example of your rather obvious ignorance of the law (*i.e.*, lack of competence) or deliberate mis-statement of the law (*i.e.*, lack of integrity and credibility) if we must proceed to an administrative hearing in this matter.

I'm sorry if I sound quite upset, but, Riley, you really take a lot of cheap shots in your Warning Notice! Really, that's what I'm starting to think you are, a cheap shot artist but nothing more! Sir, I have done nothing to deserve this kind of treatment! The only question at this point is, are you going to be a gentleman and retract your mistaken Warning Notice, or are you going to continue taking cheap shots at me, with the full power of the federal government behind you? You talk in my Warning Notice about my activities allegedly "degrading the hobby". Well, I have news for you, sir: I was never required to accept your opinions about what topics are appropriate for discussion on amateur radio (except for obscenity and threatening criminal acts), and I am not about to start accepting them now! In *my* opinion, *my* judgment about what degrades the hobby is better than yours, thank you very much! In *my* opinion, what most degrades the hobby is the really lousy job the Commission has been doing on amateur enforcement (especially the way you're pandering to the brownshirts), not any of *my* activities!

My point is that *my* opinion about what "degrades the hobby" is *just as valid* as your opinion, I simply am *not required* to accept your opinion on the matter; and you have no right to try to force your opinions on me under the guise of §97.1, or any other language appearing in Part 97. I am also going to go so far as to say

that I am just as good a person as you are, and I have absolutely no intention of letting a career bureaucrat like yourself gratuitously insult my integrity when I am making an honest living in the private sector and am paying your salary with my taxes. I am not *required* to accept your judgment as to what topics are appropriate for discussion on the ham radio, nor do I *want* to accept your judgment on the issue.

Moreover, I should advise you that, for reasons which may be obvious to you, I am in the habit of very seldom doing that which I am not required to do and also do not wish to do. I liken it to a bicyclist choosing to ride on the road, even when a separate bike path is available to him (I'm sure you know how some motorists object to that): his use of the bike lane is optional, not mandatory. He has the right to ride on the road if he wants, and nobody has the right to tell him otherwise. Likewise, I have the right to stay on 3830 merely because I *want* to, and even though, as you point out, other frequencies are available for my use, and I really don't need you trying to bullshit me by telling me otherwise because you just don't have the authority to do so, so please save your breath! It is strictly *my* decision about whether or not I want to go QSY! You don't have any violation of Part 97 that you can prove because none exists, so you try to score public relations brownie points by calling me names instead. You really ought to be ashamed of treating a taxpayer this way, but you probably won't be. You owe me an apology for this embarrassment! I find your statements about what you think are acceptable topics of conversation on the ham radio to be extremely fatuous, since you lack entirely the enforcement power to effectuate them, and your ventilations in that regard really amount to nothing more than attempting to throw your weight around, play to the brownshirts, and wait for someone like me to call your bluff. Well, I guess someone has. Have you ever heard about the piss ant who crawled up an elephant's leg with rape on his mind? Well, I'm the elephant and you're the ant! I mean really, Riley, I find your opinions about what is proper conduct on the ham radio (assuming no other violation of §97.113) rather boring and unconvincing, and I am really not interested in them in the slightest, nor am I required to display any interest in them, so please don't try to convince me that you have the right to tell me what I can say and what frequency I can choose, because you don't! In fact, you sound like something of a dweeb to me, and I therefore think I wouldn't even enjoy talking to you on the radio very much, so please don't presume to tell me how to talk to my fellow amateurs!

Do you know what else I find very fatuous about your Warning Notice, and about our subsequent telephone conversation? The way you make the facile assumption that your complainant is right in saying that nobody else wants me on

the frequency. I am not going to bore you in this letter with the details about why he's wrong about that, but I will say that (as usual?) you just don't know what you're talking about! If we go to a hearing before an ALJ, I am going to put on a lot of testimony about this issue, since this seems to be the most important question in your mind and, again, I know a lot more about the facts on this issue than you do, and you're going to lose because your complainant is giving you the wrong information! In short, my position will be that your complainant is wrong and self-serving, and your conclusion that everyone else on frequency wants me to go away is extremely slipshod, superficial and merely another example of your poor enforcement work (i.e., your failure to properly analyze the pertinent issues). In reality, there are probably 10 stations on frequency, and only one of them (your complainant) wants me to go away. Why let that one station dictate to whom the other 9 can talk? And do you know what else? Even if *all ten* of the other amateurs on frequency wanted me to go away, I still wouldn't be required to go! The issue of who wants me to go away and who doesn't is really irrelevant, since I have the *right* to use the frequency and they do not have the legal right to tell me otherwise. Do ten licensed drivers have the right to tell another driver he can't use the road, just because they don't like him? Of course not! He has the right to use the road, regardless of what the other ten drivers might desire. The exact same principle is involved here. I am specifically licensed to use the frequency, and my fellow amateurs have no greater right to use it than I do. If they attempt to run me off, then *they're* the jammers, not me! Again, Riley, you're simply on the wrong side of this case! You should be supporting *me*!

While we're on the subject of "facile and fatuous", I must say that I am also really offended by your rather obvious attempt to lump together my transmissions on 3820 and 3830 as somehow being identical in nature, or as constituting some sort of pattern of bad conduct. Again, you just don't know what you're talking about! I will win on the facts at a hearing on this issue because both situations were entirely different, and I know how they were different and you don't! Entirely different stations, times and conversations were involved in each of the two frequencies, and your attempt to distort the facts and prejudice the Commission against me by trying to lump them together as some kind of nefarious "pattern of conduct" is certainly rather gratuitous and unappreciated by me, to say the least! Please rest assured that I'm not going to let you do that at a hearing!

None of the activities prohibited by §97.113 appear. There are none of the usual indicia of any rules violations. This must already have occurred to you. You have an extremely weak case on the face of it, since you can point to no specific §97.113 violation. In view of the absence of any §97.113 violation, are you trying

to tell me that an ALJ is somehow going to magically conclude that I am interfering with another station, when neither can you show any *actual* interference? I don't think so! Now I fully appreciate that you are going to try to claim that my transmissions were *conduct*, not speech, but you still have the same problem: none of my *conduct* violated §97.113, so the only possible reason for you to be trying to hand me this load of shit is because you are trying to limit my free-speech rights.

You claim deliberate interference, but that is simply impossible. I never interfered with anyone on your tape because I have *never* operated that way. I always try to be courteous, and I *always* stand by to listen to other stations after I am done making brief comments in the roundtable QSO. I don't engage in monologues, nor do I try to monopolize the frequency. You can't prove any *actual* interference, which is the sine qua non of deliberate interference, because there simply wasn't any, and I really resent your apparent and unfair implication that you can, because I'm a good operator! If you claim actual interference, then I want a hearing before an ALJ over the issue, because I'm afraid your admitted insanity is indeed permanent! I just don't have to take this kind of abuse from you, and I have no intention of doing so! I have done nothing wrong, so who made you God? I would be perfectly content to go to a hearing over the issue, if you won't start thinking more clearly and back down.

Have you ever heard of the de minimis doctrine? I mean, what are you really saying: that I somehow injured your complainant's sensibilities so very badly with something I said on 3830 that he has the right to bar me from the frequency entirely as a result? (It wouldn't be the first time he has tried to drive other stations off the frequency, you know!) Isn't that known as the "princess and the pea" school of Rules enforcement? If you want to play the "princess" before the ALJ, Riley, then Gawd do I ever want to go to a hearing! It would be worth it just to watch you make a fool of yourself, "Princess", even if I wound up losing! I really want to see you explain to an ALJ what I did that was so terrible, "Princess"! Just be sure to bring your tu-tu and ballet shoes so you can appear in proper uniform, primadonna! I'm not being facetious at all about this point, Riley. As you know, all attorneys are required to show due and proper respect to the courts, and if you and the U.S. Attorney show up at the administrative hearing in suits and ties, I am going to argue that you are attempting to seriously mislead the ALJ by falsely attempting to appear to be attorneys and civil servants when you are really nothing but a bunch of princesses, because the "princess and the pea" is the entire theory of your case, and you should be required to act accordingly! And I am going to move for a continuance on that basis, until you guys go home and change

into your princess costumes. I'm just not going to let you mislead the court by trying to pretend that you're not really princesses and are instead normal people. In fact, as I write this, I'm starting to think that "Princess" is really a good nickname for you, Riley! Therefore, I'm going to start referring to you by that nickname hereafter in this Response.

Your complainant hasn't suffered any injury whatsoever! I didn't force him to go away, as he is trying to force me to do! The remedy you propose is entirely disproportionate to the claimed "offense", and from the Senate's failure to convict Bill Clinton in the Monicagate impeachment we discovered that you don't impose a disproportionate punishment for matters which are essentially private affairs, didn't we? Since our QSO on 3830 was a purely private conversation, as a good Democrat you want me to be able to benefit from the same principle that saved your President from impeachment, don't you? After all, if President Clinton can repeatedly get blow jobs from Monica Lewinsky in the Oval Office and it is considered purely a private matter, then certainly I can engage in a little argumentation with my fellow hams on 3830, if that is what has got you in such a tizzy, Princess, and it should likewise be considered to be purely a private matter.

And what, exactly, is the reason for your secrecy about your so-called "monitoring evidence"? I mean, what would have been so hard about your sending me a copy of that tape and asking for my reaction to it, prior to issuing your Warning Notice? You still could have sent me a Warning Notice if I failed to adequately explain my transmissions on the tape. Were you afraid I would contradict the tapes, so you wouldn't be able to jump down my throat? Do you have something to hide? Are we playing discovery games? And now you ask me for a "complete and candid response" to your Warning Notice, on pain of further prosecution under §308(b) if I am not "completely candid", yet you won't even let me hear the tapes so I can reply to them candidly? Are you deliberately trying to keep me guessing about what you have on tape so you can claim I'm not being candid and go after me under §308(b), or what? Why in the world would you tell me I have to be "candid", and then make me guess about what I'm supposed to be candid about? That is a ~~h~~ thing for you to do, Princess!

Another essential element of my defense to your Warning Notice is that, even viewed in a light most favorable to the Commission, it amounts to nothing more than that you are complaining about your own lack of enforcement over the last 20 years! Princess, you of all people well know that we hams look to the reported decisions and your warning letters for guidance about our conduct, but for the last 20 years you have deliberately engaged in the rather deceitful practice of

*pretending or claiming to have* enforcement powers under Part 97 that you clearly did not have, but instead telling hams to be self-policing! In other words, you've been perpetuating a lie based upon a lie! You've been falsely telling hams that you have enforcement powers you don't have, and then turned around and falsely told them that you weren't going to do any enforcement and that they had to be self-policing instead. You've adopted whichever of these false and contradictory positions happened to serve your interests at the time! You've *compounded* your deliberate mis-statements over a 20-year period! You did this because you knew damned well that you didn't have the enforcement powers you were claiming to have, so you *had* to let hams solve their own problems (*i.e.*, be self-policing) instead. But that cop-out sure didn't prevent you from lying about the enforcement powers you claimed you *did* have! By God, Princess, that's just *so despicable!*

As the direct result of your failure to do your job over the last 20 years, and *as the further direct result of your compounded duplicity*, as pointed out above, hams have not had the benefit of any developing law in order to guide their lawful conduct under Part 97! Instead, the Commission has engaged in the extremely disingenuous practice of pretending that hams have no free speech rights under some alleged Part 97 "free speech no-man's land" where the Commission wrongfully claims to have the right (usually §97.1 is cited, as discussed above) to censor amateurs' speech that doesn't otherwise violate §97.113 under the guise of "good amateur practice", while all the time the Second Circuit Court of Appeals was telling you that you didn't even have the right to regulate amateur radio *at all(!)* under the old Part 97, and the Commission was therefore forced to amend Part 97 in 1989 to give itself the power to enforce the Rules in the first place! Did you think nobody noticed that or something? And aren't you ashamed of yourself for continuing to work and associate with such a bunch of liars?

And ever since Part 97 was amended in 1989, you've been playing nothing but games with §97.101(b), which was first enacted in those 1989 revisions! Now §97.101(b) requires all hams to cooperate in sharing their assigned frequencies in order to make the best use of them, and further says that no ham has a preferential right to use any frequency, but in my case you're acting like §97.101(b) doesn't even exist! Your complainant simply doesn't want to share the frequency, as he is required to do under §97.101(b)! In other words, Princess, you should be on *my* side, not the complainant's! You are basically saying with your Warning Notice that you are going to give your complainant a preferential right to use 3830. Yet in other of your warning notices, you have *relied on* §97.101(b) in threatening to punish hams for doing exactly the same thing your complainant is trying to do to me (see, for example, your November 16, 1999 Warning Notice to licensee Alan

Strauss, WA4JTK. There are several other similar such Warning Notices from you in the RAIN Report). Furthermore, *even before the enactment of §97.101(b)*, the Commission revoked amateur licenses for not sharing frequencies in ways which, I believe, are highly-analogous to the way in which your complainant is refusing to share 3830. Plageman v. FCC (1984) PR Docket No. 84-531; File No. PR-2923-S and Ballinger v. FCC (1984) PR Docket Nos. 84-291 and 84-292; File No. PR-2875-S. Certainly my argument, that your complainant must be required to share the frequency is, *a fortiori*, *much stronger* since §97.101(b) first took effect in 1989 than it was at the time Plageman and Ballinger were decided, yet even the pre-Amendment cases support my position rather than yours! You'd better check yourself out in a major fashion, Princess! You're clearly wrong on the law!

In short, Princess, when this situation was first raised with me by the ham who I believe is your complainant, I carefully researched the law in good faith concerning the subject and tried to govern my actions accordingly but, due to apparent deliberate Commission action, I experienced great difficulty in ascertaining with any clarity how Part 97 governed the dispute. First I found your warning notices on the RAIN Report, saying that under §97.101(b) we have to share the frequencies, and threatening punishment if the objecting station refused to share, exactly as your complainant is doing herein. Then I found the Plageman and Ballinger decisions and saw how the Commission revoked the licenses of those amateurs because they refused to share the frequency, *even before* §97.101(b) was enacted! Of course, I really wanted to comply with the Rules, because I value my license. Because I was very confused about the state of the law on this issue after seeing how you were playing enforcement games, I attended a meeting of my local radio club, to which I belong, because my SCM, Jettie Hill, was going to be speaking, and I had heard that he was something of an expert on Part 97. I told Mr. Hill after the meeting that I was really confused about the meaning of §97.101(b), especially in light of your rather inconsistent enforcement actions, and how you appeared to be pretending that the law was something different than it actually is, and asked him what he thought. He said "nobody knows". Now with your inconsistent and non-existent enforcement, the Plageman and Ballinger cases, the plain text of §97.101(b), the fact that §97.101(b) was enacted *after* Plageman and Ballinger, and my own SCM telling me that "nobody knows", *of course* I would think I had the right to stay on frequency under those circumstances! Why would anybody in his right mind think he had to change frequency under §97.101(b), your warning notices, Plageman, Ballinger, and when even his SCM doesn't know the answer? And now you're taking exactly the opposite position! That's not fair, and it's disingenuous, Princess, and you're trying to make me pay the price! And I don't like it! And it constitutes a full and complete defense to any enforcement

action that you might bring against me! You want to have it both ways, but I don't think an ALJ is going to let you. You want to use §97.101(b) as a weapon when it suits your interests, but you want to deny its existence when, as in my case, it becomes inconvenient for you to acknowledge! And to top it all off, you're so damned arrogant and condescending about the way you do it! If you're an example of what Al Gore's "reinvented government" is going to be, then God help us! (Again, all of this goes to the issues of your competence, integrity and credibility.) You act as if nobody else can figure out the communications law but you, and you try to take unfair advantage of your (allegedly) somewhat exclusive and rather extensive knowledge about the subject. Well, you messed with the wrong guy this time, Princess, because, you see, I really have nothing to lose. I'll fight it all the way out with you, if you have nothing better to do with your time. Hell, after the IRS gets through with me, I have more time than money anyway! But don't you have any worse actors than me to pursue? After speaking to you on the telephone the other day, when you told me the hobby has become nothing more than a "taping contest", and that I'd better come up with some tapes in my own defense to counter those of your complainant, I don't really care that much if I lose my license, if that's what our hobby has come to. But I don't think it has, and I value my license, so I am going to fight your Warning Notice as far as I can.

Another real joke is the way you are claiming the one-sided tapes, provided to you by some other ham with an axe to grind, constitute "monitoring evidence". Gee, that term, "monitoring evidence", really makes your Warning Notice sound official and condemnatory, doesn't it? But whom are we trying to kid here, Princess? I mean, I know it sounds very impressive for you to claim you have "monitoring evidence" in your press release, but monitoring evidence *must be developed by the Commission, not another licensee!* I am going to object to the introduction of your so-called "monitoring evidence" into evidence at any administrative hearing, Princess, on the basis that it is not relevant, not material, biased, prejudicial, possibly doctored (you simply don't know if was doctored because you can't prove the tape's chain of possession, as you are required to do at an administrative hearing) and does not rise to the level of legal monitoring evidence because the Commission did not collect it. Also, your procedure of accepting tapes from amateurs with an axe to grind violates the Hatch Act, and they are therefore inadmissible on that separate ground, Princess. As usual, you're simply overstating your case, trying to make your job easier and trying to pander to the brownshirts, but you've chosen the wrong boy to try to victimize this time, Princess! If you want to develop monitoring evidence, develop it yourself, as you are required to do! Do your job rather than sitting around writing up bullshit Warning Notices!

Princess, what in the hell did you expect was going to happen after the Commission failed to do its job for 20 years and then suddenly hung out a “blinking neon light”, in the form of one W. Riley Hollingsworth, announcing that “we’re doing enforcement again!” Didn’t you foresee that maybe, after 20 years of no enforcement whatsoever, maybe some snivelers with an axe to grind would send you some one-sided tapes in an attempt to get rid of somebody they don’t like on the ham radio? And why in the world would you want to side with, or believe, the licensee/taxpayer who’s a sniveler in that situation, rather than the licensee/taxpayer (me) who’s *not*? Are you trying to *encourage* sniveling or something? (On second thought, I guess that's what Democrats do, after all. Then they try to get the snivelers to vote for them by promising them relief from their self-imposed problems.) But if you’re *not* trying to encourage sniveling, then maybe you’d better take down that “blinking neon light”! Princess, I’ve been jammed, and hams have tried to run me off frequencies, for years! It happens to everybody at one time or another. It’s just that I don’t go sniveling to you every time it happens, because I’m a big boy and I can handle it myself. And I’m not going to start sniveling to you now, either. (Actually, I did try complaining to then-Engineer-In-Charge Phil Kane in San Francisco one time about being jammed. He told me to take care of it myself, because hams are supposed to be self-policing, so I never bothered complaining again.) But please rest assured that, were I so inclined, I could tell you a bigger sob story than your complainant has done! But I would never do that. I’m simply not a whiner.

And if you take me to hearing, then I’m going to argue that there is no “free speech no man’s land” under Part 97; in other words, that you have no power to regulate the substantive content of hams’ on-the-air speech (except for obscenity and threatened criminal acts) that does not otherwise violate Part 97, because I’m getting really tired of you wrongfully asserting this to hammer the poor licensee. But the problem with such a ruling, if I obtained one, is that neither of us would like it. (I wouldn’t like it because it would mean that we don’t have the right to run a drunk off the frequency until he sobers up, the very situation which, I think, gave rise to this dispute.) If I win, you won’t have any power to regulate the content of hams’ speech on the air. Is that really what you want? So I can either yell, “the emperor has no clothes” now, or it can await another day, and in the meantime we will see if you start taking a more even-handed, considered and judicious approach to enforcement. It’s really up to you, Princess.

And I find it really disconcerting that you are supposed to be an amateur enforcement specialist, and I am not even a communications law specialist, although you are *supposed* to be one, yet clearly I either have a better understanding of Part 97 enforcement law than you do, or else you're deliberately dissembling and pretending that the law under Part 97 is something different than it really is, because it lets you make your job easier, issue more self-promoting press releases and keep the brownshirts happy. So at an administrative hearing I am basically going to require you to specify whether you issued my Warning Notice because you're incompetent or because you're venal. Man, Princess, I sure wouldn't like to be presented with a choice like that in front of an ALJ! I think a serious question concerning your integrity is involved with respect to your overall attitude toward enforcement. For example, why would you try to deliberately distort the law to unsuspecting licensees?

Please retract your Warning Notice and issue a written apology to me for issuing it in the first instance. Otherwise, I am going to assume that you will issue some form of official Citation or Notice of Violation concerning the matter. Please be advised that in the latter event I wish to take the steps necessary for designating the case for a hearing before an ALJ. And if you *do* issue an official Citation or Notice of Violation, please also send me, at that same time, copies of all evidence upon which you are relying to prove same, including the so-called "monitoring evidence" that you are claiming to have. In the meantime, I will finish reviewing the details of your expense reports in the Federal Register. I do hope that you have found my Response to be adequately candid, Princess, and that you have not been terribly offended by anything I've said herein, or have found my Response to be terribly intemperate. It's just that I am a little paranoid that, had I not displayed the highest degree of candor in this Response, you might try to claim that I was thereby guilty of a separate offense under §308(b) of the Communications Act!

Thank you for considering my position in this matter.

Yours very truly,

WILLIAM F. CROWELL, N6AYJ

WFC:wfc

1110 Pleasant Valley Road  
Diamond Springs, California 95619  
(530) 622-3386

September 5, 2006

W. Riley "Princess" Hollingsworth, K4ZDH  
Special Counsel, Enforcement Bureau  
Federal Communications Commission  
Gettysburg, PA 17325-7245

Re: Further response to your August 21, 2000 Warning Notice  
concerning amateur radio station N6AYJ

Dear Princess:

In my original August 31, 2000 Response to your above-captioned Warning Notice, I forgot to make certain arguments. They follow. Please give them due consideration in making your decision about whether or not to rescind my Warning Notice.

Amateurs Have More Free Speech Rights than Commercial Broadcasters

Due to Commission inaction, there is no existing law concerning the exact extent of amateurs' free-speech rights on the air. (I say this is because I have researched this issue diligently on Lexis. If you are aware of any reported decisions of the Commission outlining the extent of hams' free-speech rights, please advise me what they are.) Therefore, we are required to look to the existing body of radio free-speech law concerning commercial broadcast licensees because both classes of licensee operate under identical license wording, allowing the Commission to modify, suspend or revoke their licenses only if it promotes the public interest, convenience and necessity.

However, upon examining the commercial broadcasting station free-speech cases, they prove to be analogous only by providing an *opposite* example.

EXHIBIT A-10

In the commercial broadcasting free-speech cases, the *only* factor which permits the courts to limit broadcasters' free-speech rights, as compared to the free-speech rights of any private citizen, is that the Commission has given the commercial broadcasters a valuable franchise, in return for which they are expected to serve the public interest, at least to some extent. This permits the courts to regulate broadcasters' free-speech rights to some degree, on the ground that to do so serves the public interest.

However, *exactly the opposite* considerations apply to amateur radio. Ham radio is, by its very definition, *not* remunerative. It is not a valuable franchise to the Commission; indeed just the opposite: hams allow the Commission to claim credit for providing emergency and disaster communications. The Commission isn't *giving* amateurs anything, like they are doing with commercial broadcasters; it is instead *getting* something from hams. The "franchise" is worthless to hams on a pecuniary basis because *they're* the ones who have to do the work and they get no money for doing it. It's the *Commission* that derives the benefit from the license grant.

Therefore the free-speech law applicable to private citizens, rather than that pertinent to commercial broadcasters, applies to hams in their on-the-air QSO's.

#### No Legal Grounds Can Possibly Exist for Commission Action

The most likely Commission action, were grounds to exist, would be suspension of the operator license under 47 CFR 1.85 or modification of the station license under 47 CFR 97.27. However, both require that such an action by the Commission must promote the public interest, convenience and necessity. As a matter of law, and where no specific violation of §97.113 exists, it does not suit the public interest, convenience or necessity to violate an amateur's free-speech rights by concocting a non-existent "violation" under the vague and general language of §97.1.

If the Commission does issue an Order to Show Cause and Suspension Order, or an Order Modifying my operating privileges, I intend to present these issues to the ALJ prior to hearing by filing a motion for summary decision.

Thank you for your attention to this matter.

Yours very truly,

WILLIAM F. CROWELL, N6AYJ

WFC:wfc



FEDERAL COMMUNICATIONS COMMISSION  
Gettysburg, PA 17325-7245

November 28, 2000

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

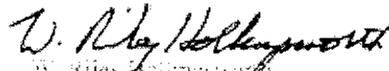
Mr. William F. Crowell  
115 Pleasant Valley Road  
Diamond Springs, CA 95619

RE: Amateur Radio license N6AYJ  
Warning Notice

Dear Mr. Crowell:

On August 21, 2000 we issued a warning notice to you concerning deliberate interference to ongoing communications on 75-Meter Amateur frequencies. You responded on August 31, 2000. Your response was not only irrelevant to the issue concerning interference, but defamatory as well. You are again cautioned that intentional, malicious-believe or defamatory conversation with communications in progress constitutes interference and degrades the service for legitimate users. Please review Section 97.1 of the Commission's rules. That rule outlines the basis and purpose of the Amateur Radio Service.

Sincerely,

  
W. Riley Hollingsworth  
Special Counsel  
Enforcement Bureau

**Exhibit A-11**

1110 Pleasant Valley Road  
Diamond Springs, California 95619  
(530) 622-3386

December 4, 2000

W. Riley "Princess" Hollingsworth, K4ZDH  
Special Counsel, Enforcement Bureau  
Federal Communications Commission  
Gettysburg, PA 17325-7245

Re: Response to your November 28, 2000 Warning Notice  
concerning amateur radio station N6AYJ

Dear Princess:

I have received your November 28, 2000 "Warning Notice" and reject its logic and conclusions completely.

Contrary to your rather self-serving assertions, my August 31, 2000 Response to your original Warning Notice was *indeed* relevant and pertinent. Obviously, you have chosen to label it as "irrelevant" and "frivolous" because you simply didn't like the fact that it proved beyond a question of a doubt that you just don't know what you're talking about. You are not competent to be enforcing the amateur rules because your knowledge of same is highly deficient. Please do not try to distort the facts by claiming my response was irrelevant. That tactic just makes your own lack of knowledge even more apparent.

I deny *ever* making any "imaginary, make-believe or fictitious conversation with communications in progress" at any time during my entire, 40+-year period of amateur radio licensure. If you have any proof to the contrary, please provide it immediately. I made this same request of you in my earlier Response, but you have obviously ignored it. This proves that your actions are not taken in good faith, but are instead mere cheap shots intended merely to disparage, defame and subject me to the ridicule of my fellow amateurs. Again, you should be ashamed of yourself but, since you have amply displayed your lack of integrity, but I'm sure you won't be.

EXHIBIT A-12

I am not interested in the slightest in your subjective opinion about what you may consider “degrades” the amateur radio service. You simply have no rules violation. Part 97 says nothing about “degradation” of the amateur service constituting a rules violation. Section 97.1, the “Basis and Purpose” of the amateur rules, does not constitute grounds for any violation of the amateur rules. Again, in *my* subjective opinion, it is *you* who is degrading the amateur service by abusing the enforcement process.

In short, I intend to continue to operate my station exactly as I have done for the last 40+ years. I am going to continue to talk to any station I want to talk to, on any frequency assigned for my use.

If you still think I am guilty of a rules violation, then designate my case for a hearing. Unless and until you do so, I am simply going to ignore your warning notices.

Thank you for your attention to this matter.

Yours very truly,

WILLIAM F. CROWELL, N6AYJ

WFC:wfc



Federal Communications Commission  
Washington, D.C. 20554

April 26, 2006

Mr. William F. Crowell  
1113 Pleasant Valley Road  
Diamond Springs, California 95619

Re: FOIA Control No. 2006-285

Dear Mr. Crowell:

This is in response to your Freedom of Information Act (FOIA) request dated March 29, 2006, for copies of records concerning your amateur radio station, N5XYJ.

Your request was received by our FOIA Control staff on March 30, 2006. In keeping with the statutory directive, we endeavor to respond to FOIA requests within twenty working days. However, where a request such as yours requires coordination with other components of the agency, we occasionally require an extension of ten working days provided for in 5 U.S.C. § 552(a)(6)(B)(i). We anticipate providing any responsive documents to you on or before May 11, 2006. If you have any questions regarding this matter please contact Karen Meicer of my staff at (703) 438-2647.

Sincerely,

Joseph P. Casey  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

**Exhibit A-13**



FEDERAL COMMUNICATIONS COMMISSION  
Enforcement Bureau  
Spectrum Enforcement Division  
1270 Fairfield Road  
Gettysburg, Pennsylvania 17325-7245

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

May 15, 2006

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

William F. Crowell  
110 Pleasant Valley Road  
Diamond Springs, CA 95619

RE: Amateur Radio Advanced Class W6WBJ; Renewal and Vanity Call Sign Application  
Case # 2906-176

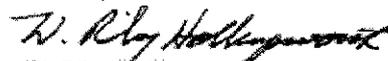
Dear Mr. Crowell:

On April 11, 2006, the Wireless Telecommunications Bureau granted in part your application for vanity call sign W6WBJ. Ordinarily the granting of a vanity call sign application results in a new ten-year term, but, due to numerous complaints filed against the operation of your station N6AYJ alleging deliberate interference, the expiration date of March 12, 2007 was not extended. The matter has been referred to the Enforcement Bureau for review.

The matters raised in the complaints must be resolved in order for your license to be renewed. Copies of those complaints are being sent to you under separate cover pursuant to your Freedom of Information Act (FOIA) request. Additionally, two complaints are enclosed with this letter. Section 308(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 308(b), gives the Commission the authority to obtain information from applicants and licensees regarding the operation of their station and their qualifications to retain a Commission license. Accordingly, you are requested to fully address, within 30 days of receipt of this letter, each complaint forwarded to you pursuant to the FOIA and the complaints enclosed with this letter. In a letter of this type we are required to advise you that Congress has made punishable a willfully false or misleading reply. See 18 U.S.C. § 1001.

The information you submit will be used to determine what action to take on your renewal. If this matter is not resolved, your application will be designated for a hearing before an Administrative Law Judge to make a decision whether your Amateur license should be renewed. As an applicant, you would have to appear at a hearing in Washington, DC, and would have the burden of proof in showing that you are qualified to retain an Amateur license.

Sincerely,

  
W. Riley Hollingsworth  
Special Counsel

Enclosures  
Cc: FCC Western Regional Director

**Exhibit A-14**



Federal Communications Commission  
Washington, D.C. 20554

May 16, 2006

Mr. William F. Crowell  
1110 Pleasant Valley Road  
Diamond Springs, California 95619

Re: FOIA Control No. 2006-285

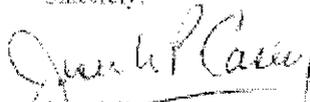
Dear Mr. Crowell:

This is in response to your Freedom of Information Act (FOIA) request dated March 29, 2006, for copies of records concerning your amateur radio station, N6AYI.

We are providing to you copies of 22 pages and one compact disc. We have withheld one internal memo pursuant to FOIA Exemption 5, 5 U.S.C. § 552(a)(5) and section 0.457(c) of the Commission's rules, 47 C.F.R. § 0.457(c). FOIA Exemption 5 and the Commission's rule permit us to withhold inter-agency and intra-agency records which would not be available by law to a party other than the agency in litigation with the Commission. We also have redacted handwritten notes of FCC staff pursuant to the deliberative process under FOIA Exemption 5. In addition, we have redacted information (i.e. names, home and email addresses, and telephone numbers) from these documents pursuant to FOIA Exemption 7(C), to protect individuals' personal privacy. See 5 U.S.C. § 552(a)(7)(C) and 47 C.F.R. § 0.457(g)(3).

If you are not satisfied with the partial denial of your FOIA request, you may file an application for review of the decision with the Commission's Office of General Counsel within 90 days of the date of this letter pursuant to section 0.407 of the Commission's Rules, 47 C.F.R. § 0.407(j).

Sincerely,

  
Joseph P. Casey

**Exhibit A-15**

1110 Pleasant Valley Road  
Diamond Springs, California 95619-9221  
(530) 622-3586

CERTIFIED MAIL

May 29, 2006

William F. Holdings, Jr., Special Counsel  
Federal Communications Commission  
Special Enforcement Division  
1775 Constitution Road  
Ft. Belknap, Mississippi 39254-7115

Re: Apparatus Call Sign W3WBJ; renewal of validity call; Case # 2006-176

Dear Mr. Holdingsworth:

I have received your May 15, 2006 letter and the two attached complaints. Please allow this letter to inform you that, for the following reasons, I cannot fully address the issues therein as required by 47 U.S.C. § 908(b) without knowing the identities of the complainants and the full text of the complaints. You have redacted this information.

In order to fully address the issues, I need to examine the credibility of the complainants. I believe it is likely that I am familiar with the complainants, and that I already have information bearing upon their credibility, but I cannot be sure without knowing their identities.

I also need to know the complainants' identities in order to determine whether or not they are members of the Commission's staff or Official Observers, as is required for the admissibility of their testimony to exist under 47 U.S.C. § 154.06(4), subparagraphs (a) and (b), because if no such foundation exists, you would not be able to pursue the matter a hearing before an Administrative Law Judge based upon their testimony.

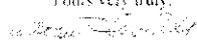
William F. Holdings, Jr., Special Counsel  
Re: Apparatus Call Sign W3WBJ; Case # 2006-176  
May 29, 2006  
Page 1

I do not believe that your request for a response impermissibly derogates from my Sixth Amendment right to confront and cross-examine the witnesses against me in this proceeding, and the United States Supreme Court cases of Miguel v. United States, 356 U.S. 217 (1958); Snyder v. Massachusetts, 291 U.S. 97 (1934); Green v. Texas, 380 U.S. 400 (1965) and Greene v. McElroy, 360 U.S. 474 (1959) so long as the requested matters are redacted. Greene v. McElroy held that the Sixth Amendment protection applies to administrative proceedings like the instant one because the Commission clearly adjudicates issues. Furthermore, Snyder and Greene say the Sixth Amendment right was incorporated by the Fourteenth Amendment and applies to the states as well as the federal government. Although the Sixth Amendment right to confront witnesses applies to this case because the Commission has the power to impose monetary forfeitures, and a reply that is willfully false or misleading violates a separate criminal statute, 18 U.S.C. § 1001.

Would you therefore kindly send me unredacted copies of the complaints? If the Commission continues to maintain that you are entitled to redact said information, would you please be so kind as to specify my and all statutes, regulations and legal decisions which you believe give the Commission that right?

Would you also please extend my time to respond to your request so that the 30-day response period doesn't begin to run until I receive the unredacted complaints?

Thank you for your cooperation. I look forward to your reply.

Yours very truly,  
  
WILLIAM F. CROWELL

WFC:ckk

**Exhibit A-16**

1110 Pleasant Valley Road  
Diamond Springs, California 95619-9221  
(530) 622-3386

CERTIFIED MAIL

June 10, 2006

W. Riley Hollingsworth, Special Counsel  
Federal Communications Commission  
Spectrum Enforcement Division  
1270 Fairfield Road  
Gettysburg, Pennsylvania 17325-7245

Re: Amateur Call Sign W6WBJ; renewal of vanity call; Case # 2006-176

Dear Mr. Hollingsworth:

This is my response to your May 15, 2006 letter (with attachments) and Mr. Casey's May 16, 2006 letter (and its attachments and the accompanying Compact Disk) concerning my FOIA request. I appreciate the opportunity to resolve these complaints, pursuant to 47 CFR §§ 1.945(e) and 97.27(b). Please let me assure you that, since the complaints are essentially without merit, I don't really consider this to be an adversarial proceeding and I therefore intend to be completely candid with you herein.

I have made a good-faith investigation into the exact boundaries of Amateurs' free-speech rights when using Amateur radio. To the extent, if any, that the complainants object to the substantive nature of my speech, the complaints would violate my free speech rights under the First Amendment unless my transmissions violated Title 47 CFR §97.113 or some other specific provision of 47 CFR, Part 97 (hereinafter "Part 97").

It would be incorrect, for example, to argue that Sec. 97.1 of Part 97 (the "Basis and Purpose" section) might be used as a substantive limitation on what Amateurs can say on the radio. This is because Sec. 97.113 says that only specific provisions of Part 97 provide the basis for Rules violations, and that only transmissions specifically prohibited by §97.113 or elsewhere in Part 97 are actionable by the Commission. Consequently, the rather vague and general language of §97.1 cannot, and does not, contradict the quite specific language of §97.113. Indeed, §97.1 has remained unchanged since it was first enacted in the 1951 amendments to the Rules. In 1988 rule making proceedings (FCC

Exhibit A-17

PR Docket No. 88-139), various persons proposed additions to the "bases and purposes" rule, but the Commission rejected them and ruled that §97.1 would remain unchanged; that is, that all subjects of discussion are permissible in the Amateur service and that "no area of knowledge is now prohibited [for discussion] under the present principles of basis and purpose." The Commission went on to conclude in those 1988 Rulemaking proceedings that "No purpose would be served, therefore, by revising the principles that have stood for nearly four decades as the general statement of objectives for the Amateur service in the United States" (Par. 16). Since nothing further has been heard from the Commission on this subject since those Rulemaking proceedings, Sec. 97.1 would appear to remain unchanged to this day. Therefore, Amateurs can discuss anything they want on the ham radio, so long as it does not violate §97.113 or any other specific provision of Part 97.

Before proceeding to discuss the specific complaints, please allow me to cite what I feel to be the other applicable statutes and regulations determining the nature and extent of radio amateurs' free-speech rights. In this regard, it must be remembered that the amateur service is the only radio service that is strictly *non-remunerative* in nature [§97.113(a)(3)]; that is *prohibited* from broadcasting [§97.113(b)]; *and* that does *not* receive an exclusive frequency assignment as part of the license grant [§97.101(b)]. These three special features of the amateur service mean that the statutes and regulations that apply to broadcasting licensees simply don't apply to ham radio.

Even though I don't think you are alleging that I said anything obscene or indecent, amateur radio free-speech rights cases most often arise in the context of alleged on-the-air obscenity. These cases are nevertheless relevant herein because if, as I believe, the law will not even permit the Commission to regulate alleged obscenity spoken by ham radio operators, a fortiori the Commission cannot regulate the content of amateur's speech that is *not* obscene.

Of course §326 of the Act prohibits both censorship and the use of obscene, profane or indecent language by means of radio communication, but its terms are obviously self-contradictory; it fails to define those terms and it provides neither an enforcement mechanism nor prescribes a penalty, so in order to clarify the issue we must turn to decisional law that interprets §326 and the other obscenity statutes. And, of course, §97.113(a)(4) appears, on its face, to prohibit the use of "obscene or indecent words or language" in the amateur service. However, the specific obscenity statutes (e.g., 18 USC §1464), pursuant to which §97.113(a)(4) was promulgated and with which it must comply, all define the offense as "*broadcast* obscenity". Under the statutes, a *broadcast* is required by the very definition of the offense, and it is made an element of its commission.

The Courts and the Commission have repeatedly said that the Commission's obscenity standards apply to the *broadcast* media [FCC v. Pacifica Foundation 438 U.S. 726