

William F. Crowell

Attorney at Law

January 21, 2009

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FCC Mail Room

Marlene H. Dortch, Secretary
Federal Communications Commission
445 - 12th Street S.W.
Washington, D.C. 20554

Re: Application of William F. Crowell to renew Amateur Service license W6WBJ
WT Docket No. 08-20; FCC file no. 0002928684

Dear Secretary Dortch:

I am the applicant-licensee in the above-entitled case.

Enclosed you will please find the original and six (6) copies of my Reply to the Enforcement Bureau's Response to my Motion for Permission to File Appeal from certain Interlocutory Rulings of former ALJ Steinberg therein.

Please file and docket this document and direct it to ALJ Sippel in the manner that you deem appropriate. Thank you for your cooperation.

Yours very truly,


WILLIAM F. CROWELL

WFC:wfc
encls.

cc: Kris A. Monteith, Chief, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 7-C723, Washington, D.C. 20554

Rebecca A. Hirselj, Ass't. Chief, Investigations & Hearings Div., Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-A236 Washington, D.C. 20554

Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, ATTN: Judy Lancaster, 445 12th Street, S.W., Room 4-C330 Washington, D.C. 20554

1110 Pleasant Valley Road, Diamond Springs, California 95619
telephone: (530) 295-0350; fax: (530) 295-0352

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

In the Matter of) WT Docket No. 08-20
)
WILLIAM F. CROWELL) FCC File No. 0002928684
)
Application to Renew License for)
Amateur Service Station W6WBJ)

To: Marlene H. Dortch, Secretary
Federal Communications Commission

Attn: Richard L. Sippel,
Administrative Law Judge

**APPLICANT'S REPLY TO THE ENFORCEMENT BUREAU'S
RESPONSE TO HIS REQUEST FOR PERMISSION TO FILE
APPEAL FROM THE FORMER PRESIDING OFFICER'S
INTERLOCUTORY RULINGS ON DISCOVERY**

On January 5, 2009 Applicant-licensee WILLIAM F. CROWELL mailed for filing with the Presiding Officer herein, the Honorable Administrative Law Judge Richard L. Sippel, a Request pursuant to 47 C.F.R., Chapter I, Part 1, Subpart B, §1.301(b) for an Order permitting Applicant to appeal to the Commission from certain interlocutory orders regarding discovery herein, which were made by the

former Presiding Officer, the Honorable Administrative Law Judge Arthur I. Steinberg, on December 31, 2008 (i.e., after an inexplicable 6-month delay and on the very day he retired). Pursuant to the former ALJ's April 2, 2008 Order, on the same date Applicant also electronically served said Request on the presently-assigned ALJ and on Bureau Counsel.

Title 47 C.F.R., Chapter I, Part 1, §1.45(c) permits the filing of replies to opposition to motions. The reply is limited to the scope of the opposition. Thus, the filing of this Reply is proper as specifically provided for under the Commission's Rules of Practice and Procedure.

Title 47 C.F.R., Chapter I, Part 1, Subpart B, §1.301(b) provides that Requests such as that filed by Applicant must be filed within 5 days of the service of the interlocutory order complained of. Then 47 C.F.R. §1.4(h) provides:

If a document is required to be served upon other parties by statute or Commission regulation and the document is in fact served by mail [.] and the filing period for a response is 10 days or less, an additional 3 days (excluding holidays) will be allowed to all parties in the proceedings for filing a response.

Application of Rule 1.4(h) to Applicant's normal 5-day response period means that paper copies of said Request were technically required to be physically filed with the Commission by Thursday, January 8, 2009. Applicant is informed and believes that said Request was actually physically received by the Secretary of the Commission on or before said date. However, and inexplicably, the Secretary did not stamp the document as "Received" until January 14, 2009. This delay was clearly improper, was not the fault of Applicant and was beyond Applicant's control.

Improperly seeking to profit from the Commission's wrongful delay in filing said Request, the Enforcement Bureau filed a Response thereto which does not substantively address any of the issues raised therein. Instead, the Enforcement

Bureau argues *only* that said Response was “procedurally defective” because it was not filed within the applicable time limit.

Title 47 C.F.R., Chapter I, Part 1, Subpart B provides, in Sec. 1.205, as follows:

Subpart B. Hearing Proceedings

Sec. 1.205 Continuances and extensions.

Continuances of any proceeding or hearing and extensions of time for making any filing or performing any act required or allowed to be done within a specified time may be granted by the Commission or the presiding officer upon motion for good cause shown, unless the time for performance or filing is limited by statute.

Applicant respectfully submits that good cause has been shown within the meaning of Sec. 1.205 of the Rules for the presiding ALJ to grant an extension of time for the filing of Applicant’s said Request. The time for filing thereof is set by Commission regulation §1.301(b), not by statute. Applicant was entirely diligent in filing same. The reason for the delay in filing was not caused by Applicant, but instead by the Secretary of the Commission. Indeed, given the inexplicable delay by the Commission Secretary in filing said Request, it would have been *impossible* for Applicant to have physically filed the document any earlier, short of making a special trip to Washington, D.C. to hand file it.

Moreover, since said Request was filed electronically with the Enforcement Bureau on January 5, 2009, no hardship whatsoever would result to the Enforcement Bureau from allowing same.

Obviously, the Enforcement Bureau has no substantive opposition to said Request because if it did, it would have made such a substantive argument in its Response. It did not do so. Instead, the Enforcement Bureau seeks only to unfairly capitalize on the Commission Secretary’s failure to do her job in a timely fashion. This is typical of the Commission Secretary’s and the Enforcement

Bureau's conduct throughout the pendency of this case, and the ALJ should not countenance it.

If Applicant is to be held to the strict letter of the regulations concerning physical filing of his documents with the Commission, then it is simply going to be impossible for him to file any documents herein in a timely fashion because the Commission Secretary has made it abundantly clear that she does not intend to file any of Applicant's documents on the day they are actually received. Applicant is informed and believes that this is because the Commission Secretary insists on having all of his filings X-rayed before filing them, because of the Secretary's clearly unfounded, and indeed ludicrous, fears that they might contain anthrax spores or constitute some other type of terrorist attack on the Commission. Obviously, this practice represents a fundamental breach of Applicant's right to procedural due process herein.

Accordingly, and especially since the Enforcement Bureau obviously can offer no substantive opposition to Applicant's Request, it is respectfully requested that said Request be granted, and that Applicant be permitted to appeal to the Commission from the former ALJ's December 31, 2008 interlocutory discovery orders herein.

Dated: January 21, 2009.

Respectfully submitted,



William F. Crowell, Licensee/Applicant

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 January 21, 2009 I served the foregoing Applicant's Reply to the Enforcement Bureau's Response to his Request for Permission to File Appeal From the former Presiding Officer's Interlocutory Rulings on Discovery 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:

Marlene S. Dortch, Secretary, Federal Communications Commission
445 - 12th Street S.W., Washington, D.C. 20554
(original and 6 copies)

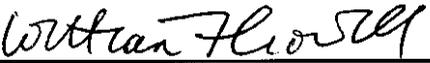
Kris Monteith, Chief, Enforcement Bureau, Federal Communications Commission
445 - 12th Street, SW, Room 7-C723, Washington, D.C. 20554

Rebecca A. Hirselj, Esq., 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)

Federal Communications Commission, Enforcement Bureau,
Investigations & Hearings Division
ATTN Judy A. Lancaster, Esq., 445- 12th Street, S.W., Room 4-C330,
Washington, D.C. 20554 (Bureau Counsel)

I further declare that, on the same date, and pursuant to the April 2, 2008 Order of former Presiding Officer Arthur Steinberg at the Pre-Hearing Conference of said date, I emailed copies of the foregoing document to said parties and to ALJ Sippel at their respective email addresses, in lieu of FAXing same.

I declare under penalty of perjury that the foregoing is true and correct, and that this proof of service was executed on January 21, 2009 at Diamond Springs, California.



William F. Crowell