

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL

In re)	EB Docket 07-13
)	
DAVID TITUS)	FRN No. 002074797
)	File No. EB-06-IH-5048
Amateur Radio Operator and Licensee of)	
Amateur Radio Station KB7ILD)	

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

DAVID L. TITUS

George L. Lyon, Jr.
His Counsel

Lukas, Nace, Gutierrez & Sachs, LLP
1650 Tysons Blvd., Suite 1500
McLean, Virginia 22102
(703) 584-8678

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Summary

This proceeding seeks to determine the effect on Mr. Titus's qualifications to hold his amateur radio license of his conviction 16 years ago when he was 18 of making immoral communications with a minor, and whether Mr. Titus's amateur license should be revoked. The Bureau has not met its burden of proof to support a conclusion that Mr. Titus's license should be revoked.

The touchstone of the Commission's character policy is the issue of whether the licensee can be expected to fulfill his FCC responsibilities. The character policy is not focused on punishing an individual for past indiscretions that are not predictive of how the individual will fulfill his responsibilities as a Commission licensee.

Mr. Titus has not been charged or convicted of another crime since serving and completing his 24 month sentence. It has not been alleged or found that Mr. Titus has violated any FCC rule or policy, nor any provision of the Communications Act of 1934, as amended.

The evidence is uncontroverted that Mr. Titus's sexual orientation is toward adults. The Bureau has come forward with no evidence that Mr. Titus has had any inappropriate contact with minors – defined by Washington State law as persons 16 years of age or less. Mr. Titus testified his sexual interest is in adult males.

The Bureau's case, such as it is, is based on speculation that Mr. Titus is at a high risk to reoffend based on his having been declared a level 3 sex offender by Detective Robert Shilling. Detective Shilling admits, however, that most sex offenders do not reoffend and that Washington State has an even lower rate of reoffense, a fact confirmed by Dr. Allmon. Moreover, the basis pursuant to which Mr. Titus has been labeled a level 3 sex offender lacks any rational scientific support.

Although Mr. Titus's crime was serious, it did not involve a violent assault. Moreover, Mr. Titus's conviction happened 16 years ago and the juvenile acts are even more remote in time, occurring some 20 year or more ago. The Commission has made it plain many times that convictions occurring well in the past are of considerably less importance under the Character Policy than recent convictions. Indeed, the fact that Mr. Titus has gone some 16 years without reoffending is compelling evidence of his rehabilitation.

Dr. Allmon's testimony clearly shows Mr. Titus's rehabilitation. He scored in the normal range on the various psychological tests administered. He did not show deception on these tests or on a polygraph examination. He was open with Dr. Allmon concerning his sexual history and desires. Dr. Allmon confirmed he is not a pedophile, his interest sexually is not in minors, but in adults.

Even more compelling evidence of his rehabilitation are the character witness statements provided by law enforcement personnel and others that while they are aware of Mr. Titus's past sex offense history, he has been an exemplary citizen both with regard to amateur radio and in general and he has shown no sexual interest in minors. There is also no question here of misrepresentation or lack of candor.

In addition to considerations of remoteness in time and rehabilitation -- each of which apply here -- the FCC's character policy considers the licensees overall record of compliance with FCC rules and policies. *1990 Policy Statement*. Here there is absolutely no dispute that Mr. Titus has been a fully compliant licensee. Indeed, the testimony of several witnesses is to the effect that Mr. Titus is a credit to the amateur radio community. He has labored hard and long to advance the amateur service, from organizing the MicroHAM club at Microsoft to his participation in ARES/RACES. He operates a repeater system in the Seattle area which provides

excellent coverage and which is available for emergency communications in the event of a disaster. These facts aptly demonstrate that Mr. Titus is a credit to the *amateur service* despite his past felony conviction. It simply would not serve the public interest to revoke his amateur license.

Ultimately underlying the Bureau's theory of the prosecution of this proceeding is the fear that Mr. Titus would somehow use his amateur radio license to attract and sexual abuse a minor. That fear is not supported by any evidence, however. Putting aside the uncontroverted evidence that Mr. Titus is not interested sexually in minors, the Bureau has not shown there is any realistic possibility of the use of amateur radio to attract underage victims. The Bureau has simply not come forward with any evidence that supports the underlying rationale for the designation of this revocation proceeding. Speculation and surmise cannot meet the burden of proof the Bureau must bear.

Given Mr. Titus's 16 year record of no offense, the evidence of rehabilitation, the evidence of his commitment and contributions to the amateur service and the total lack of any evidence that amateur radio has ever been used as a means to facilitate the sexual abuse of a minor, the conclusion that Mr. Titus's license to operate his amateur radio station should not be revoked is manifest.

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

David Titus by counsel and pursuant to the Presiding Administrative Law Judge's *Order*, FCC 08M-85 submits his proposed findings of fact and conclusions of law in the above referenced proceeding.

I. Proposed Findings of Fact.

1. The Enforcement Bureau commenced this proceeding by issuing a show cause order setting Mr. Titus's license to operate Amateur Radio Station KB7ILD for a revocation hearing. *See Order to Show Cause*, 07D-377 (January 30, 2007) ("Show Cause Order").

Specifically, the Bureau designated three issues:

- (a) to determine the effect of David L. Titus' felony conviction(s) on his qualifications to be and remain a Commission licensee, and
- (b) to determine, in light of the evidence adduced pursuant to the foregoing issue, whether David L. Titus is qualified to be and remain a Commission licensee, and
- (c) to determine, in light of the evidence adduced pursuant to the foregoing issues, whether the license of David L. Titus for Amateur Radio Station KB7ILD should be revoked.

Show Cause Order, at para. 6. The show cause order, as required by Section 312(d) of the Communications Act of 1934, as amended, and FCC Rule Section 1.91(d) placed the burden of proceeding *with the introduction of evidence and the burden of proof on the Bureau*. *Show Cause Order*, at para. 9. Hearing sessions were held in Washington, DC on July 15 and 16,

2008, following a July 14, 2008 admissions session. As shown below, the Bureau has not met its burden of proof. As such, the presiding ALJ must find that Mr. Titus's license to operate Amateur Station KB7ILD should not be revoked.

A. Summary.

2. Mr. Titus was convicted in Benton County, Washington on April 16, 1993, of violating Washington Revised Code Section 9.68A.090, communicating with a minor for immoral purposes. That was 16-plus years ago when Mr. Titus was 18 years old. Mr. Titus was sentenced to serve 25 months in prison for this offence. He served his sentence and was released from prison 14-plus years ago on January 5th, 1995. Pursuant to Washington law, Mr. Titus is required to register as a sex offender. Mr. Titus has not reoffended in the past 16-plus years since he was convicted. The evidence shows no relation between his felony conviction and his being an amateur radio licensee. In fact, the evidence shows Mr. Titus has conducted himself in connection with his amateur radio license in the highest tradition of the amateur service.

B. Origin of this proceeding.

3. This proceeding arose from a letter sent to Senator Maria Cantwell on or about September 26, 2006 by David Condon who expressed his concern with Mr. Titus possessing an amateur radio license in light of his sex offender status. Mr. Condon stated that his issue with Mr. Titus was that he is the owner of a radio repeater on the frequency of 444.375 MHz. Mr. Condon alleged that allowing Mr. Titus to operate on amateur radio frequencies was potentially dangerous to children. Mr. Condon asked Senator Cantwell to intercede with the FCC to have Mr. Titus's license revoked. Bureau Exhibit 8.

4. Mr. Condon did not testify. Nor did the Bureau come forward with any correspondence showing Senator Cantwell's role in institution of this proceeding.

5. John Schurman did testify that he participated in drafting the Condon letter to Senator Cantwell. Mr. Schurman is President of the Lake Washington Ham Club which seeks to introduce children to amateur radio. The club generally has about 50 children between the ages of 10 to 12 for whom it teaches classes. Each child who attends classes is required to have a sponsoring adult. Mr. Schurman is concerned that he does not want any child to communicate with Mr. Titus on the radio or otherwise. Mr. Schurman has not had any problem with Mr. Titus. Bureau Exhibit 6. Evidence presented from the Bureau confirms that minors participate in amateur radio. Bureau Exhibits 9-11, 12-13.

6. In Mr. Schurman's amateur radio experience, going back to 1968, he has never experienced a situation where a HAM operator has engaged in soliciting a minor for illicit or illegal purposes. Tr. 427. Nor has he ever heard of this being done. Tr. 427. Mr. Schurman admitted there is no such thing as a private communication in amateur radio. Tr. 443, 461-63.

7. Mr. Schurman admitted that Mr. Titus has never sought to be involved with his club or any club directed to youths. Tr. 457. He also admitted that from his 40 years of involvement in the hobby, amateur radio is more a hobby directed to adults than to children. Tr. 457. Mr. Schurman has no knowledge that Mr. Titus has sought to mentor minors in amateur radio. Tr. 459. He admits that anyone from the public can attend ham events whether they have a license or not. Tr. 459-60. He has no knowledge that Mr. Titus's has failed to fulfill his responsibilities as a repeater operator nor is he aware of any complaints concerning Mr. Titus's amateur operations. Tr. 460-61.

8. Mr. Schurman has no training or experience as a psychiatrist, or a psychologist, or as a counselor, or in rehabilitation, or in law enforcement, or in the study of sexual deviance. TR. 464. Mr. Schurman has never witnessed Mr. Titus committing a crime. Tr. 464-65. Mr.

Schurman has never heard Mr. Titus express intent to commit a crime. Tr. 465. Mr. Schurman has never heard Mr. Titus threaten to commit a crime. Tr. 465.

9. Mr. Schurman does know of Mr. Titus's work in Amateur Radio, including with the Amateur Radio Emergency Service (ARES), an important element of amateur radio. Tr. 465-67. Mr. Schurman is an amateur extra class operator, the highest class of amateur licensee and is familiar with Part 97 of the FCC's rules, the rules governing the amateur service. Tr. 467. Mr. Schurman admitted it is fair to say that he has no knowledge of Mr. Titus having ever violated Part 97 of the FCC's rules. Tr. 468. Mr. Schurman further testified the amateur service is self policing and that he would feel obligated to report anyone committing a felony over the air. Tr. 468-70, 482.

10. Mr. Schurman has no information Mr. Titus has used amateur radio to commit a crime. Tr. 475. Mr. Schurman has no information Mr. Titus has ever used amateur radio in the commission of a crime. Tr. 477. Mr. Schurman has never heard Mr. Titus solicit someone under age to have sex. Tr. 477. Mr. Schurman has no information that he has ever used amateur radio to solicit someone under age to have sex. Tr. 477. Mr. Schurman has never heard Mr. Titus on the air try to meet someone who was under age. Tr. 477. Mr. Schurman has no information Mr. Titus has ever used amateur radio to try to meet someone who was under age. Tr. 477-78. Mr. Schurman has worked with upwards of 1,000 children in connection with amateur radio. Tr. 480. Not one of them has ever suggested that Mr. Titus has sought to molest them. Not one of those estimated 1,000 children has suggested that Mr. Titus has tried to meet them. Tr. 480.

11. Seattle Police Detective Robert Shilling also testified for the Bureau. Detective Shilling is the lead detective in the Seattle Police Department's Sexual Assault and Child Abuse Unit/Sex and Kidnapping Offender Detail. He is experienced in the area of sexual offender

community notification. One of Detective Shilling's duties is to prepare community notification bulletins concerning registered sex offenders who move into Seattle. Bureau Exhibit 2, p.2. Detective Shilling has evaluated Mr. Titus three times. Upon his release from prison in 1995, Mr. Titus was classified as a level 2 sex offender by the Seattle Police Department committee responsible for such determinations and which was chaired by Detective Shilling. Level 2 purports to indicate a moderate risk for reoffending. Bureau Exhibit 2, pp. 4-5.

12. In 1997 the State of Washington adopted procedures for the use of an actuarial model to perform risk assessments on sex offenders as they are released from prison. Detective Shilling wrote the legislation requiring an actuarial model. Detective Shilling also served on the End of Sentence Review Committee which adopted the actuarial model Washington State users. The model, called the Washington State Sex Offender Screening Tool (WASOST) is composed of the Minnesota Sex Offender Screening Tool (MnSOST) and the Rapid Risk Assessment for Sex offense Recidivism (RRASOR). If one or two of the listed notification considerations are present, regardless of actuarial score, it will raise the subject to a level 2. If there are three or more notification considerations, regardless of the actuarial score, the person will be considered a level 3. Bureau Exhibit 2, pp 5-6.

13. In 2004, Detective Shilling raised Mr. Titus's sex offender status to level 3. This was after Mr. Titus was detained and questioned by the Mercer Island Police. Bureau Exhibit 7. Despite the existence of the WASOST screening tool, Detective Shilling did not use that tool in raising his level to a level 3. Rather, as he stated in a contemporaneous email:

"Stephanie has faxed you over an incident report from Mercer Island. We have a similar one from Seattle in 2002. He's obviously acting out. He claims in the report to have a girlfriend that is a King County Deputy. He was caught with a King County hat, a kel light and a King County badge necklace around his neck. He said these came from his girlfriend. You'll see the report. Please show this clown as a level 3 on your website."

Titus Exhibit 18. Detective Shilling was not present at Mercer Island, nor did the Bureau present testimony from anyone who was present. Mr. Titus explained what occurred. He went to Mercer Island to visit a friend. After seeing his friend he went for a late night walk near a park and used the restroom. As he was leaving, after washing his hands, he was confronted by a police officer who asked him about shooting the outside wall of the restroom with paintballs. Mr. Titus denied knowing anything about that. In response to the officer's request, he gave her his identification which she ran and which came back that he was a registered sex offender. She also noticed that he was wearing a necklace with a sheriff's medallion about the size of a nickel and asked where he got that. He replied that his "gal" friend Angie gave it to him and declined to give Angie's last name. Tr: 599-601.

14. Another officer arrived on scene and questioned Mr. Titus. Mr. Titus declined to give them the last name of the friend he was visiting or allow his picture to be taken. He did consent to a search of his truck for the paint ball gun, of which no such device was found. Officers, however, fixated on his flashlight and a ball cap that says "Sheriff" found in the back of his truck, which Angie also gave Mr. Titus, and suggested that he was trying to impersonate a police officer. Tr. 601-04.

15. It is not illegal for a non-police officer to possess the flashlight Mr. Titus owns, a Streamlight X-20. Tr. 679. In fact, such flashlights are sold over the Internet. <http://www.streamlight-flashlights.com/>; <http://www.amazon.com/gp/product/B0000AUT0U>.¹ Hardware store lights are cheap pieces of plastic that do not seem to work when needed and can break easily. Tr. 680. The hat Mr. Titus has does not say King County Sheriff and is not the style issued by the King County Sheriff's Department. Tr. 680-81.

¹ The web site states: "Streamlights make excellent gifts for ANYONE who needs a dependable light for work or play. You don't have to be a Policeman or Fireman to appreciate a Streamlight flashlight."

16. Mr. Titus was not arrested, charged or convicted of a crime and there is absolutely no suggestion in the record that any minors were present. There is nothing to suggest that he was *involved in a sex offense and nothing to suggest that amateur radio was involved in any manner.* Tr. 604, 679.

17. The other incident Detective Shilling referred to in his email raising Mr. Titus's sex offender level, but not in his prepared written testimony, involved a traffic accident. Mr. Titus dropped off a friend at an apartment in Seattle and as he was heading southbound on Yale Street, a lady heading northbound turned left into a driveway and immediately backed out into his vehicle. The two of them got into a shouting confrontation with her pointing a finger in his face. Mr. Titus told her to get her finger away from his face. She did not. He grabbed her hand and twisted it down to her side. He later went home and received a call from the police regarding the incident. Tr. 593-94.

18. Mr. Titus was not arrested, charged or convicted in connection with this accident. There is nothing in the record to suggest there were any minors present. There is nothing in the record to suggest any intent to commit a sex offense, and the incident had no relationship to amateur radio. Tr. 593-94.

19. On cross examination, Detective Shilling testified that the public is largely misinformed about the recidivism rate of sex offenders and the threat that strangers pose to children. Tr. 737-38. He said the public largely overestimates the rate of sex offender recidivism and the threat that strangers pose to children. Tr. 737-738.

20. Detective Shilling is familiar with the study done by Harris and Hanson in 2004. Dr. Hanson in particular is one of the top researchers in the field of sex offender research. The Harris and Hanson study involved more than 4700 subjects. This sample is large enough to be

statistically significant in Detective Shilling's opinion. The Harris and Hanson study involved a 15 year follow-up period. From this sample of more than 4700 subjects studied over 15 years Drs. Harris and Hanson found that 73 percent of sexual offenders had not been charged with or convicted of another sexual offense. The rate of recidivism for Washington State is even lower according to Detective Shilling. Tr. 738-39.

21. Detective Shilling believes that after sex offenders are released back into the community, that the community should provide an infrastructure that facilitates successful re-entry into the community rather than contributing to obstacles known to increase recidivism. In Detective Shilling's opinion, released sex offenders need stability. They need stability in their social life and need social support and friends, a social network and appropriate relationships. Society should not place obstacles in the path of sex offenders. It should not make it difficult for them to find work. It should not place obstacles in the way of their appropriate associations. It should not place obstacles that cause instability in their lives. This is because instability causes one to feel out of control. Detective Shilling believes that sex offenses, at least in large part, result from an offender's feeling of lack of power and control. Tr. 748-52.

22. Detective Shilling is not and never has been an amateur radio licensee. Detective Shilling is not familiar with Part 97 of the FCC's rules. Detective Shilling has never been to a HAMFEST and is not familiar with the operation of amateur repeaters. Detective Shilling does not know the particulars of how the amateur service is self policing. He does know that the FCC's amateur rules require an amateur transmitting to identify themselves by their call sign and he knows what a call sign is. Detective Shilling knows that amateur radio is not specifically directed toward minors. Tr. 752-55.

23. Detective Shilling is an experienced sex offender investigator. He investigates sex offenses against children. He is head of the Seattle sex offender and kidnap detail. Seattle is the largest jurisdiction in the State of Washington in terms of population. Detective Shilling has investigated hundreds of sex offenses against children. Detective Shilling is one of the more experienced sex offender investigators in the State of Washington. Tr. 756-58.

24. Detective Shilling testified that the Internet is a medium often used by sex offenders. This is because the offender can remain anonymous while searching for his or her victim. Detective Shilling has investigated cases where sex offenders used the Internet to seek out their victims. The Internet is a significant source of victim access for sex offenders. It is Detective Shilling's understanding that no FCC license is required to use the Internet. Tr. 755, 758-59.

25. The Seattle Police Department keeps a file on all sex offenders registered in its jurisdiction. Detective Shilling's detail does not go through those files periodically and throw away paperwork because it is old and or because they don't have enough room to keep everything. Of the hundreds of sex offenses against children that Detective Shilling has investigated, not a single one that Detective Shilling can think of used amateur radio to attract the victim. In fact, Detective Shilling has not ever heard of a case of a sex offender using amateur radio to find his victim. From Detective Shilling's experience, compared to the Internet, amateur radio is not a significant source of victim access for sex offenders. Tr. 759-63.

26. Detective Shilling nevertheless testified that the FCC should revoke Mr. Titus's amateur radio license because amateur radio could be a source of victim access. This is even though Detective Shilling knows of no instance of Mr. Titus using amateur radio for such a purpose. Tr. 763-64.

27. Detective Shilling admitted, however, that minors are present in a variety of circumstances in which Mr. Titus might be present. Even though minors ride city buses, Detective Shilling wouldn't try to prevent Mr. Titus from riding a city bus just because minors might be riding the bus as well. He admitted that minors also eat in restaurants, but that he wouldn't try to prevent Mr. Titus from eating in a restaurant just because minors might be eating there as well. He admitted that minors go to libraries, but conceded that he wouldn't try to prevent Mr. Titus from going to the library just because minors might be there. He admitted that it is fair to say that virtually every human endeavor may involve minors, except for where they are specifically excluded by law, such as from liquor stores, bars and adult entertainment establishments. And he admitted that society should not be trying to exclude sex offenders from the bulk of human activity as doing so society would hinder the opportunity for their integration into the community. Detective Shilling would counsel an amateur radio operator who was a sex offender not to talk to a minor on the air. Tr. 764-69.

28. Detective Shilling testified that we would want someone evaluating a sex offender to have adequate training, such as a psychiatrist, psychologist or sex researcher. Tr. 803-04. Detective Shilling admitted he is not a psychiatrist or a psychologist. He does not have a PhD in any social science. Detective Shilling is neither a statistician nor a researcher into sexual deviance. Tr. 801-02. Yet, he testified that he evaluated Mr. Titus three times. Bureau Exhibit 2, p.5.

29. Despite his lack of training or experience in social science, Detective Shilling was instrumental in the design of the Washington Sex Offender Screening Tool. (WaSOST). He testified that the WaSOST is principally based on the Minnesota Sex Offender Screening Tool (MnSOST) with certain notification considerations added. The MnSOST in turn is one of a

number of actuarial type tools. It provides a risk assessment score for the WaSOST. Detective *Shilling is familiar with a variety of other actuarial tools, but none of them are used to determine the risk assessment score rendered by the WaSOST nor does the WaSOST use Phallometric testing. That is a measure of sexual arousal resulting from various auditory and visual stimuli.* Tr. 806-809.

30. In addition to the MNSOST, the WASOST contains four notification considerations. These are: (1) The victim in a non-familial sex conviction was particularly vulnerable or incapable of resistance due to physical or mental disability or ill health; (2) the sex offense was of a predatory nature or the offender used a position of community trust, i.e., coach, teacher group leader or police officer or a professional relationship to facilitate the non-familial offense; (3) The offender continued to act out sexual deviancy during confinement; and (4) the offender was an adult male with a Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR) score of 4 to 6. Titus Exhibit 16. Tr. 798-800.

31. The RRASOR looks at four issues. First, if there are prior sex offenses, not including the index charge. It awards one point for 1 conviction or 1-2 charges, two points for 2-3 prior convictions or 3-5 charges, and 3 points for four or more convictions or six or more charges. Second it awards one point if the age at release (current age) is less than 25. Third, it awards no points if the sex offender's only victims are female, but awards one point if there are any males. Fourth, it awards no points if all victims are related, but awards a point if any victim is unrelated. So under the RRASOR, a 26 year old father who rapes his 5 year old niece after raping his 10 year old daughter gets a score on the RRASOR of one, while a 24 year old gay man who solicited an unrelated 15 year old male to show him his penis and who was previously convicted of male prostitution would receive a RRASOR score of 4, meriting a notification

consideration under the WASOST. *See* Bureau Exhibit 14. Tr. 890-892. Such a result borders on the irrational.

32. In fact, *Detective Shilling testified that he does not endorse the use of the WASOST.* Tr. 801.

33. The MnSOST was created by a team headed by Dr. Epperson of the University of Iowa. There are a number of problems with the MnSOST. Dr. Epperson himself recommends against using it to classify sex offenders. It is also not actively supported. Moreover, tools like the MnSOST are designed to assess at the time they are released the risk that sex offenders will reoffend, not years later. And these tools primarily or even exclusively measure static variables. Thus, they cannot evaluate the effect on recidivism over the passage of time. For example, they cannot evaluate the effect of AA or other therapies pursued after release. They cannot evaluate the effect of marriage or other significant social relationships after release. In fact, if Mr. Titus were to be hit by a car tomorrow and rendered an inoperable quadriplegic, unable to walk or move, much less get an erection, the MnSOST, on the basis of static variables, would still label him as a level III sex offender, most likely to reoffend. TR. 809-821.

34. Detective Shilling agrees with the conclusion that actuarial tools are not appropriate for assessing decreases in risk of re-offense following an extended period (10 years or more) of successful integration in to the community marked by the absence of offending behavior and an absence of behaviors associated with prior sex offenses (e.g., substance abuse, inappropriate associations), notwithstanding how such an individual may score on an actuarial risk assessment tool. Tr. 842.

35. Detective Shilling is aware of the Hanson and Bussiere 1996, 1998 meta-assessment study of various actuarial tools and that they found that many MnSOST items did not

hold up on cross-validation. Tr. 848. Detective Shilling candidly admitted that the MnSOST is not the best tool that could be used and that Dr. Epperson never held it out as a finished product, *but only as a research tool. Tr. 848.*

36. With respect to the RRASOR, Shilling conceded that it is not intended to provide a comprehensive assessment of all the factors relevant to the prediction of sexual offender recidivism. Instead, the RRASOR should be used only to screen offenders into relative risk levels. These risk levels could then be adjusted by the consideration of other relevant information such as deviant sexual preferences and treatment compliance. TR. 892-95.

37. Detective Shilling testified that Washington State Institute for Public Policy is an instrumentality of the Washington State Government. In 2004 the legislature directed the WSIPP to conduct a comprehensive analysis of the effectiveness of the state's sex offender policies. As part of that comprehensive analysis, the WSIPP studied the End of Sentence Review Committee's sex offender notification procedures. Detective Shilling is aware of that study. In a January 2006 report, WSIPP made a key finding that: "The notification considerations score has little or no accuracy in predicting sex offender recidivism." And in that same report, WSIPP made the additional key finding that: The risk assessment score has little or no accuracy in predicting sex offender recidivism, although some elements have moderate predictive accuracy. A month before, in December 2005, WSIPP made a related report, and in that report it said the following: "The notification levels determined by the ESRC do not classify sex offenders into groups that accurately reflect their risk for reoffending." Tr. 895-97. Titus Exhibits 16-17.

38. According to Detective Shilling, WSIPP studied the Washington State Sex Offender Assessment tool and found it wanting in several ways, including that the notification

and assessment scores had little or no accuracy in predicting recidivism and the notification levels did not classify offenders into groups that accurately reflect their risk for reoffending. And yet, nowhere in Detective Shilling's prepared testimony, which cited and relied on the WASOST, did Detective Shilling relate that information. Tr. 897-904.

39. With respect to the incident at Mercer Island that prompted Detective Shilling to raise Mr. Titus's sex offender level to a level three, Mr. Titus voluntarily allowed the officer to search his vehicle where various items such as a flashlight and hat that said Sheriff were found. Tr. 868-870. Detective Shilling has no idea whether Mr. Titus ever even wore the hat. Tr. 871. Mr. Titus did not have the flashlight or the hat with him in the bathroom. Tr. 873, 878. Detective Shilling admitted that it makes perfectly good sense for a motorist to have a flashlight. The type of flashlight Mr. Titus owns is very durable. Tr. 875. Detective Shilling suggested these were symbols of power and control in his vehicle, yet he admitted these items were legal. Tr. 870-71.

40. The medallion necklace Mr. Titus had on at the time is about the size of a nickel. Tr. 879.

41. After the incident on Mercer Island, Detective Shilling re-evaluated Mr. Titus. However, he did not even use the WaSOST. He did it in his head, and sent a fax to have the Seattle sex offender website updated to reflect the change in status. In that fax he referred to Mr. Titus as a "clown" without further documentation. Tr. 881. Detective Shilling also admitted to inconsistencies in the report from the officers at Mercer Island and what he had been told by them. Tr. 888-89.

C. David Titus.

42. Mr. Titus was born in Kennewick, Washington on August 15th 1974. His mother, Anna immigrated to Alaska from (then) Czechoslovakia in 1971 at the age of 21. While living in Alaska she met Mr. Titus's biological father, Gene Titus and married in 1973. Gene Titus had previously served time in prison. The Titus's relocated to the Tri-City (Washington State) area where Mr. Titus's paternal grandparents lived and where Mr. Titus would be born. Anna worked as a waitress in Pasco, Washington to support the family. Gene Titus did some odd jobs. He was a drinker who abused his family. Titus Exhibit 1, p.1.

43. As an example of the abuse, when Mr. Titus was about 5 years old, his father beat him under his bed with the buckle on the end of a long belt so badly that Mr. Titus wet his pants. Mr. Titus was subjected to emotional abuse as well as physical abuse at the hand of his biological father. Bureau Exhibit 4, p. 17. In 1980 Gene Titus kidnapped his family at knife-point and held them hostage at Mr. Titus's uncle's house. After he fell asleep, Anna was able to escape with her children and call the police. At some point, Mr. Titus's parents separated, but his biological father continued to be a threat, breaking into the house numerous times. There was a second kidnapping event resulting in his father's conviction and a prison sentence. David Titus had to testify against his father with regard to that incident. Bureau Exhibit 4, p 17. At one point, this forced his mother to take the children away to a secluded apartment for safety. Mr. Titus's father has been in and out of prison since Anna separated from him in or about 1980. Titus Exhibit 1, p.1.

44. Despite the abuse, his biological father's interest in CB radios sparked Mr. Titus's interest. Mr. Titus was fascinated by the CB radio as well as his grandparents' police scanner.

Mr. Titus remembers going to his grandparents' residence as a youngster and listening to the scanner. Titus Exhibit 1, pp.1-2.

45. In 1986 his mother married Robert Harris, a K-9 police officer; they live in Pasco, Washington, with K-9 Falko and the family dog Teddy. Titus Exhibit 1, p.2.

46. Mr. Titus was first exposed to the term "HAM" having to do with "radio" at a pre-adolescent age. He had a big, black AC/DC radio which received many bands. It had AM, FM, SW1, SW2, HAM, AIR & Police. He loved listening to that radio and would frequently dial around to see what he could hear. Titus Exhibit 1, p.2.

47. It is an established psychological fact that abuse suffered as a child can result in the child acting out in inappropriate ways. Unfortunately that appears to have been the result of the abuse Mr. Titus suffered. In his case, this phenomenon was manifested in Mr. Titus engaging in inappropriate sexual relationships at a very early age, both consensual and non-consensual. Bureau Exhibit 4 at p. 17 suggests that Mr. Titus at age 6 was raped by a teen aged babysitter. Most of his sexual activity was with males, although he had a few female sexual partners. Prior to age 13 he did not consider himself "gay" however. Titus Exhibit 1, pp. 3-4.

48. Mr. Titus was adjudicated on April 18, 1986 by the Benton County juvenile court for taking indecent liberties with an 8 year old boy. Mr. Titus was 11 years old at the time. He received a placement at Echo Glen Children's Center in Snoqualmie, Washington for up to 65 weeks. Titus Exhibit 1, pp. 2-3.

49. In 1987, after release from Echo Glenn Children's Center, Mr. Titus went to a group home -- Twin Peaks Youth Ranch in Yakima, Washington -- for one year of treatment in lieu of probation. Twin Peaks specialized in the treatment of young sex offenders and was run by therapist Greg Nebeker with whom Mr. Titus remains in contact. Bureau Exhibit 4, p. 18

indicates that Mr. Titus did well with his treatment program at Twin Peaks. After Twin Peaks, Mr. Titus moved to Pasco, Washington in 1988 to live with his family. He attended grades 7 through 9 at McGloughlin Jr. High School. At school he was teased, harassed, picked on and called names like "faggot." He didn't have many friends, if any, around his age. He got along best with adults – his teachers, persons from the small gay community and the soon-to-be HAM radio scene. Titus Exhibit 1, pp. 2-3.

50. During this time Mr. Titus became involved in Citizens Band radio. He still had that "magical" interest in two-way radio communications from his earlier childhood. He won a small 40-channel mobile CB in a prize drawing at one of the local "CB Breaks" when he was 13 or 14 years old. He mounted the CB radio on the handlebars of his mountain bike along with a 2-foot fiberglass antenna. For power he installed a small motorcycle battery on the back rack. He would ride around the Tri-City area while using his CB radio. During this time he held various jobs to fund his radio purchases and activities. He also had a CB setup in his bedroom at home and would often stay up late talking on the radio. Titus Exhibit 1, pp. 2-4.

51. With regard to his sexuality, he realized when he was 13 years-old that he is gay and so informed his mother. Titus Exhibit 1, pp. 3-4.

52. Mr. Titus struggled in school. He was mostly focused on two areas where he felt most welcome: the gay community and radio scene. Titus Exhibit 1, p.4.

53. About this time, he began to hear about amateur radio. He took a class for new HAM's when he was about 14 years old. He studied the "novice book", listened to Morse code tapes, and passed his novice class exam. He was 14 years old the August 14th day in 1989 when the FCC novice license arrived in the mail. He was proudly David L. Titus, KB7ILD, the day before his 15th birthday. He became friends with Ken Forsberg, N7NIR, co-owner of the radio

shop from which he won the CB radio. Mr. Forsberg was 10 years older than Mr. Titus. Mr. Forsberg helped to teach Mr. Titus about amateur radio. It was during this time in which Mr. *Titus learned about the emergency communications role of amateur operators. Titus Exhibit 1, p.4.*

54. Bureau Exhibit 4, pages 18-19 indicate that Mr. Titus was having trouble at home around the 1989-90 time frames. During this period, Mr. Titus was again adjudicated as a juvenile, for taking indecent liberties with a 12 year old boy in the rest room at school. Although Bureau Exhibit 4, at page 14 states that he was again placed at the Echo Glen Children's Center for up to 65 weeks, Mr. Titus testified that this is in error and that he was placed at Naselle Youth Camp ("NYC"). At NYC he participated in the sex offender treatment program. He also went to school and worked in the cafeteria. Titus Exhibit 1, p. 5.

55. Upon release from NYC, in 1991, at age 16, he moved back to the Tri-Cities, and went to live with an older friend. He was employed at a local hotel restaurant where his mother worked. He initially enrolled in the local high school, but soon after obtained a GED from the local community college. Upon completion of the GED, he attended college classes, and joined a local Medical Technician Explorer Post where he was trained in Advanced First-Aid & Basic Life Support level CPR. He enjoyed going to the local fire station and volunteering to work with the paramedics. He became a certified American Red Cross First-Aid & CPR Instructor. He continued his interest in amateur radio and re-involved in the gay community. Titus Exhibit 1, p.5.

56. About this time, Mr. Titus began to exercise at a local gymnasium, which was owned by a pro-body builder he met thru his step-father years earlier. He was interested in fitness, so he left the restaurant job and took employment at the gym. He also had other part time

jobs. While working at the gym, he committed the crime of Communication with a Minor for Immoral Purposes. Mr. Titus had several conversations with a minor approximately 11 years old concerning sexual development and his sexual history and asked the boy to expose his penis. Mr. Titus was convicted and sentenced to Twin Rivers Corrections Center for a term of 25 months. Titus Exhibit 1, p. 5.

57. Upon Mr. Titus's release on January 5, 1995 at age 20, he was classified by the Seattle Police Department as a level 2 sex offender. Chairperson of the committee that evaluated Mr. Titus was Detective Robert A. Shilling. Bureau Exhibit 2, p. 5.

58. Mr. Titus reports he had some struggles with sex offender treatment while incarcerated. He attributes that "to my hard-headed stubbornness. I was immature; still only between 18 & 20 years old." Although he struggled, he testified that he learned many things, including, about deviant behavior cycles and interventions, coping skills, assertive communication, healthy relationships and dealing with negative emotional states. He testified that the most important thing he learned was to start to take responsibility for his own behavior. He testified that he began to mature and think more seriously about his future and what he wanted to do with his life. He started to make cognitive choices about obeying the law and not victimizing others. He stated that this evolved over years – not just in prison – but well into his new life in Seattle. Titus Exhibit 1, pp. 5-6.

59. Upon release from prison he moved to Seattle and obtained employment. He eventually moved in with a lover, a recent college graduate with a degree in engineering who worked for Microsoft. His lover knew about computers, which were fairly new to Mr. Titus. Mr. Titus was excited to learn more about computers which he combined with his interest in amateur radio. Ultimately, Mr. Titus obtained a job at Microsoft. Titus Exhibit 1, p.6.

60. Mr. Titus became active in the Seattle-area amateur radio community. He co-founded an Amateur Radio club at Microsoft, known as MicroHAMS. He was active in coordinating and making MicroHAMS events occur & recruiting other Microsoft hams to participate. He established a partnership with Icom to participate in joint MicroHAMS/Icom field days. The club membership and participation grew. Titus Exhibit 1, pp. 6-8.

61. Mr. Titus suffered sleep apnea which contributed to losing his job and leaving MicroHAMS. During the time of his unemployment he coordinated installation of an amateur radio repeater system on a very tall tower in the middle of Seattle. The repeater system is available for use to the amateur radio community. For several years the repeater system has been used as a primary communications infrastructure to support a large marathon event in addition to other events. He also reached an oral agreement with an amateur radio operator, employed by the Port of Seattle, to use the repeater as a backup communication system to the Port's infrastructure. Titus Exhibit 1, pp. 8-9.

62. For the past several years he has been in various treatments for sleep apnea and his energy and productivity level have improved moderately. However, he still suffers from some memory problems and lack of energy and productivity issues. Titus Exhibit 1, p. 9.

63. Mr. Titus believes his amateur radio license has helped him mature to become a more responsible, law abiding citizen. He has established many healthy friendships with people in the radio community. Amateur radio has been a very positive experience in his life, providing healthy, lasting friendships and technical knowledge. He has made a positive contribution in the amateur radio community and he hopes to continue contributing as an amateur radio operator. Titus Exhibit 1, p. 9.

64. Mr. Titus has been rehabilitated and successfully completed all terms of his Court-ordered sentence. *Mr. Titus realizes that minors do participate in amateur radio as they do in almost every sport, hobby and aspect of life.* Mr. Titus testified that he is not interested in minors for illegal purposes and that he has chosen to live his life as a law abiding citizen and as a licensed amateur radio operator. The last 16-plus years are evidence that he has chosen to lead the life of a productive, law-abiding, FCC-licensed, citizen. Titus Exhibit 1, pp.10.

65. Mr. Titus states he is involved in amateur radio because it is the logical progression from his child-hood dreams and aspirations. He states it has been a pleasure to contribute his skills and resources to help the community through amateur radio in events such as natural disasters and education to public service events. Titus Exhibit 1, p. 11.

66. Mr. Titus testified he has expanded his knowledge and ability to contribute through participation in the ARRL's ARES program, Communications Academy, activity with the NWAPRS group and experimentation. He testified he keeps updated knowledge of the amateur radio sector by reading periodicals such as ARRL's QST. He has mentored new-comers to the ranks of amateur radio and has lent his skills and knowledge to lead others to obtain the fun, success and hope he has obtained. Shortly before the commencement of this proceeding, he obtained study material to upgrade to the Amateur Extra class as well as study material to prepare for the FCC General Radio Telephone Commercial License examination. Titus Exhibit 1, p. 10.

67. Mr. Titus has made many excellent, long-term, healthy friendships through amateur radio. Because of his involvement in amateur radio, he has received employment, which helps maintain his personal stability. Due to his involvement in amateur radio he has received technical knowledge, which he can parlay into future job opportunities. He has met

acquaintances through amateur radio in different walks of life, enriching his life experiences and growth. Titus Exhibit 1, pp. 10-11.

68. Mr. Titus comes into contact with minors in a variety of circumstances. On the bus; at the grocery store; at sporting events. Nevertheless, he does not seek to have sex with them. His interest is with legal aged partners. Tr. 672-74. Mr. Titus has never used amateur radio to "cruise" for sex partners. Tr. 677-78. He has never solicited sex through amateur radio. Tr. 687.

69. Mr. Titus testified that he learned several important concepts in sex offender treatment: victim empathy, how to handle negative emotional states, self intervention, about appropriate relationships and boundaries. In addition as he has grown older, his sexual interests are in older persons as well. Tr. 1056-57. It saddens him that he has hurt people and he is glad that he is a changed person. Tr. 1059.

70. Mr. Titus has spent more than \$20,000 dollars in defending himself in this proceeding. He testified of his hope that the Commission would forgive mistakes he made as a teenager, some sixteen-plus years ago.

D. Character Witnesses.

71. Mr. Titus's commitment to amateur radio is aptly demonstrated by the statements of his numerous character witnesses.

72. Stephanie Steele is a lieutenant with the Fruitland, Idaho Police Department. She has been employed with Fruitland PD since March 1985. She holds an Intermediate Idaho POST certificate, an Idaho POST Instructor Certificate in Firearms, and is a certified computer forensic examiner and cyber-crime investigator. Investigation of those who target and abuse children have been part of her regular duties for more than 22 years. She testified it is not her nature to be

accepting of those who choose to violate others or society and she is sickened by those who prey upon, neglect, and injure children. Titus Exhibit 3.

73. *Lt. Steele has known Mr. Titus for about 10 years. She first met him in association with the Northwest APRS Group annual gathering in North Bend, Washington. This gathering is an Amateur Radio function hosted at the Lutheran Ministry owned Valley Camp operated by Thom and Teena Proehl, also licensed amateur radio operators. This gathering has been in existence for approximately 11 years and Lt. Steele has attended all but the first meeting. She states that Mr. Titus would go out of his way to help anyone at the gathering who needed help understanding any of the new technologies being discussed. Titus Exhibit 3.*

74. She testified that over the years she grew to know Mr. Titus better and found they had many of the same interests (Ham Radio, Computers, food, anything Hi-Tech). She said she learned from him many things that she was able to take back to her job and use to help her investigations. She said that she would also periodically run into Mr. Titus at other Ham Radio events in Washington and Oregon. Titus Exhibit 3.

75. She testified that over time their friendship has grown, their communication become more frequent, and her respect for him as a person has gotten only stronger. She was shocked when she learned of Mr. Titus's criminal history. It caused her to think back over their communications and all the times she had been around him and with that against the reality of his criminal past and his current behavior and interests. She said the two just did not add up and certainly did not represent the man she had come to know. She said she has seen David in many different situations and environments and have never seen him exhibit even the slightest interest in, or display any improper behavior around children. Even in situations like at Valley Camp where Mr. Titus would have had access to minors she said he never showed the slightest interest.

She said she has never seen Mr. Titus exhibit any violent or aggressive behavior towards anyone. She said although he is outspoken and does not hesitate to speak up when he feels he is being treated wrong, he does not push himself on others. Titus Exhibit 3.

76. Once Lt. Steele learned of Mr. Titus's past she confronted him and he made a full and honest disclosure to her. With his permission she verified the information he gave and it all proved out exactly as he had explained. Mr. Titus explained he made some foolish decisions when he was a juvenile and an even worse one shortly after turning eighteen years old. Mr. Titus's attempt at eighteen to have improper communications with an eleven year old boy was impossible for her to understand. She told him this and he made no attempt to rationalize or blame shift. He accepted responsibility for his poor decisions and showed an unusual willingness to accept his punishment but felt that at some point enough should be enough. She agreed. Titus Exhibit 3.

77. Lt. Steele does not believe Mr. Titus should be persecuted for his love of Ham Radio, something that has been a positive influence in his life and something he could use to give so much to others. She stated she trusts and believes in Mr. Titus. She said she would trust him with her life and reputation. She believes him to be an honorable and admirable person that has worked very hard and paid sufficiently for his past mistakes. She sees nothing to be gained by removing his access to a hobby which provides him with an outlet for his considerable talents. Both emotionally and professionally she feels that Mr. Titus poses no threat to anyone, especially children, either personally or through Ham Radio. She said it is her sincerest belief that Mr. Titus seeks to retain his amateur license for all the right reasons and that no one has anything to fear from him. Titus Exhibit 3.

78. David L. Gray of Kennewick, WA, testified he has been a personal friend of Mr. Titus for at least 15 years or longer. His career in the criminal justice profession has spanned more than 24 years, both in California and more recently in Washington State. He is currently employed as a mid-level manager with the Washington State Dept. of Corrections, having been with DOC for more than 15 years. He was previously a Reserve Police Officer and then a Deputy Sheriff in California for almost 10 years prior to moving to Washington State in the mid 1980's. Titus Exhibit 4.

79. He is aware of Mr. Titus's criminal history. He testified he has never observed Mr. Titus acting inappropriately toward, or showing any interest in, any minors either in connection with amateur radio or otherwise. Over the past 15 years of acquaintance with Mr. Titus, he testified there has never been any occasion he had any suspicion or knowledge Mr. Titus was acting or behaving in a manner that might be related to his past conviction. If he would have any such knowledge or suspicion, he testified that it would certainly have resulted in terminating any further contact with Mr. Titus. His career in the criminal justice profession is very important to him. He would not be willing to put himself in a position that might jeopardize his career, give the perception of impropriety on his part, or affect his upcoming retirement from the Washington State DOC in about 6 years. Titus Exhibit 4.

80. Mr. Gray has had the occasional opportunity to observe David's activities within the amateur radio community, including his operation on air, his propensity to comply with the FCC's rules, his compliance with the law in general and his propensity for truth and veracity. He is familiar with Mr. Titus's character, his reputation with other members of the law enforcement community he is friends with, his abidance for the law in general and for his truth and veracity over the period of time he has personally known Mr. Titus. He believes Mr. Titus

has not only learned from and successfully moved on from his past, but more importantly, that he has done a lot over the past 15 years to give back to the community. Mr. Gray has personal knowledge of Mr. Titus's involvement in assisting law enforcement and other agencies during times of local disasters. Mr. Gray believes not only that Mr. Titus' continued ability to maintain and utilize his amateur radio license is important to Mr. Titus, but it would serve the citizens of Washington State. Titus Exhibit 4.

81. David Dobbins of Medical Lake, WA, has held an amateur radio license since 1992. He testified it has been his privilege to know Mr. Titus, since about 1999, in their capacities as amateur radio operators. He testified they have spent a fair amount of time together during those years as they both have interests with the Automatic Position Reporting System (APRS). As lead coordinator for the Northwest APRS (NWAPRS) group, Mr. Dobbins has observed Mr. Titus at most of their annual functions and associated meetings and has never had any suspicions of unlawful or immoral behavior on Mr. Titus' part. He testified Mr. Titus has been an enormous resource to improving NWAPRS, as well as a great friend. In 2003, he states that Mr. Titus, his (then 18 year old) son, and he spent a week together traveling from Washington to Arizona and back to deliver a load of furniture. He said Mr. Titus's behavior during the trip was beyond reproach. Titus Exhibit 5.

82. Mr. Dobbins states that around November 2006 he was informed of the Seattle Police Department's elevation of Mr. Titus's sex offender registration level and began looking into how that might impact David's attendance at their ham radio gatherings, where occasionally younger children are present. What became immediately apparent to him was a lack of any chargeable offense committed that could possibly justify raising the offender level status. The details contained conjecture and no clear reason for such an upgrade. What was clearly evident

was convictions for sex offenses while Mr. Titus was a teenager. He conferred with another ham radio operator, also a police officer as is Mr. Dobbins, and the caretaker of the Lutheran Valley Camp in North Bend, WA, where they hold their gatherings. They exchanged a number of emails and came to the conclusion Mr. Titus was errant in his ways as a teen, but found no record of any criminal contact with children since then. Their decision to take no further action was based on their personal knowledge of Mr. Titus over the past 10+ years. Mr. Dobbins believes that Mr. Titus's sexual orientation is his own business. Titus Exhibit 5.

83. John Furuya of Bellevue, Washington is a licensed amateur radio operator, Extra class. He has been a licensed amateur since 1972 when he received an amateur license in Japan. He received his FCC amateur license in 1996. In the course of his activity in the amateur radio community, he came to know Mr. Titus. He has known him for approximately seven and one-half years and worked closely with him in the amateur radio community in the Seattle area. He states Mr. Titus is very knowledgeable in the hobby and has been very helpful in broadening his knowledge, especially in the area of digital technology. Mr. Titus was instrumental in helping him find a location for the 440 MHz repeater that he owns and which provides excellent coverage of the area. Titus Exhibit 6.

84. He testified he has had the opportunity to observe Mr. Titus's activities within the amateur community including his on-air operation, his propensity to comply with the FCC rules, his compliance with the law in general and his propensity for truth and veracity. He testified he is also familiar with Mr. Titus's good reputation in the amateur community. Titus Exhibit 6.

85. Mr. Furuya testified he is aware of Mr. Titus's past. He has never observed David acting inappropriately toward, or showing any interest in, any minor either in connection with amateur radio or otherwise. Titus Exhibit 6.

86. Marcia Ann Crigler of Pasco, Washington is a retired school counselor and *certified mental health counselor who has worked as a teacher, Juvenile Parole Counselor and educational counselor*. She has known Mr. Titus for approximately 8 years as a result of her association with Mr. Titus's mother and stepfather. She has had the occasion to observe Mr. Titus's activities when he visits his family on holidays and has not observed any inappropriate conduct between Mr. Titus and minors she has seen him around. She testified that Mr. Titus appears to be a straightforward, caring person. She said he respects rules and is very law-abiding. She would describe him as a straight arrow by the book person who is compassionate and loves animals. Titus Exhibit 7.

87. Reverend Richard K. Olsen has known Mr. Titus in excess of 10 years. His association with Mr. Titus has centered on the technology associated with Automated Position Reporting System (APRS) devices, UHF FM repeaters, and ARES/RACES activities. He has observed Mr. Titus at gatherings such as ARRL Field Day and the Summer APRS Gathering, both conducted at Valley Camp in North Bend, WA. He has been associated with Mr. Titus at the annual Puyallup Hamfest, and in the conduct of ARES/RACES drills. It is Rev. Olsen's opinion as an ordained minister and fire/police chaplain that Mr. Titus has always conducted himself in a social setting with a high level of civil demeanor, and demonstrated a generous spirit. Rev. Olsen describes Mr. Titus as cooperative in his dealings with others, conducting his amateur radio operations with a high regard for operational discipline, and technical proficiency, with a positive awareness of his responsibilities with regard to FCC Part 97. Titus Exhibit 8.

88. Rev. Olsen is aware of Mr. Titus's sex offender conviction as a teenager. Notwithstanding that conviction, Rev. Olsen has never observed Mr. Titus acting inappropriately toward, or showing any interest in, any minor either in connection with amateur radio or

otherwise. At no time has he observed Mr. Titus engaging in any behaviors that would in any way compromise the personal safety or integrity of either minors or adults. Rev. Olsen considers Mr. Titus to be an asset to ARES/RACES in King County, Washington, and to be an excellent radio amateur overall. He strongly recommends that the FCC allow Mr. Titus to retain his amateur radio license. Titus Exhibit 8.

89. Dennis L. Cresswell of Pasco, Washington is president of Mid-Columbia Newspaper Publishers, Inc. He was previously employed with the Department of Energy Hanford Site, where he worked for various contractors for 15 years. He has been with other government contractors in New Jersey and on the Pacific Island of Kwajalein, and also served as a lieutenant in the U.S. Army in Vietnam. He has held Secret clearances. Titus Exhibit 9.

90. Mr. Cresswell is the father of five and grandfather of eight, and states he almost regards Mr. Titus as another son. He has known him and his parents since Mr. Titus was 15, and they are close friends to this day. He knows Mr. Titus to be someone who has lived his entire adult life with integrity, and he believes it's time society stopped punishing him for the foolish mistakes of a teenager. Titus Exhibit 9.

91. He knows how much Mr. Titus's HAM license means to him and how much of his technical skill he has acquired through amateur radio. He states that Mr. Titus has succeeded in high-tech jobs in spite of the challenges — partly because his early interest in radio gave him a good head start. He sincerely hopes the FCC will not take that away from Mr. Titus. He has stayed in close contact with Mr. Titus over the years and has no reason to believe he would ever repeat the mistakes he made as a teen. He testified Mr. Titus has always been truthful with him, and he believes Mr. Titus would not use amateur radio, the Internet or any other form of

electronic communication to contact anyone for any illicit purpose. Such behavior would not be consistent with his knowledge of Mr. Titus. Titus Exhibit 9.

92. Anna Harris is Mr. Titus's mother. She testified that although she loves her children she would not lie for any of them for their or her benefit. She testified Mr. Titus is a good person. She sees him as a caring and giving human being. Her whole and extended family love to see Mr. Titus when he comes to the -Tri-Cities area to visit, especially their grandchildren who love to see their "uncle David." She would have no reservations about leaving any of these children with Mr. Titus at any time. Of course she would not put herself or David in this position. She has never experienced any inappropriate behavior from Mr. Titus toward these or any other children since his conviction. Titus Exhibit 10.

93. She further testified that as to radio communications, to her knowledge, Mr. Titus has always been professional and helpful to all who work with him over the radio starting with his first C.B. radio mounted on his bicycle when he was a young boy. From this first C.B. radio, Mr. Titus's love of wireless communications grew into him becoming a HAM Radio operator. Getting a HAM Radio license for a young man like Mr. Titus took great determination and dedication. He is very proud of being a HAM Radio operator and she does not believe he would risk this kind of investment in any way. Titus Exhibit 10.

94. Roger Harui of Seattle, WA has known Mr. Titus for more than ten years, both professionally and as a friend. Mr. Titus worked for him for several years as a lab engineer at Microsoft Corporation. During the time he has known Mr. Titus, he has known him to be a man of good character, a person who understands right and wrong, and a friend who he considers trustworthy. He has on rare occasions seen Mr. Titus interact with minors and did not think

anything of the interaction or experience anything that would be considered questionable. Titus Exhibit 12.

95. He was recently made aware of Mr. Titus's conviction as a teenager and this completely surprised him. In the years he has known Mr. Titus, he has not observed any inappropriate activity with a minor. Although he is not involved in amateur radio he knows firsthand the amount of reverence Mr. Titus has for the FCC rules, and has on occasion experienced his on-air behavior and has seen nothing but compliance. He has also seen the level of personal investment and commitment Mr. Titus has in amateur radio and the seriousness in which he treats it, and he knows that Mr. Titus would not compromise something he treats with such uttermost importance. Titus Exhibit 12.

96. Dr. William C. Kenner IV of Seattle, WA is an Extra Class licensed amateur radio operator. He has been a licensed amateur since 1984. In the course of his activity in the amateur radio community he has known Mr. Titus for more than 8 years as a friend as well as an employee (for 2 years). He testified that he has had the opportunity to observe Mr. Titus's activities within the amateur community, including his operation on air, his propensity to comply with the FCC's rules, his compliance with the law in general and his propensity for truth and veracity. In these areas, his behavior has been beyond reproach. He finds Mr. Titus to be a very enthusiastic supporter of amateur radio and believes it would be amateur radio's loss should Mr. Titus lose his license. In his view, amateur radio needs more hams like Mr. Titus. Titus Exhibit 13.

97. Dr. Kenner is aware of Mr. Titus's criminal conviction as a teenager occurring more than 15 years ago. Notwithstanding that conviction, he testified he had never observed Mr. Titus acting inappropriately toward, or showing any interest in, any minor either in connection

with amateur radio or otherwise. He sees Mr. Titus as a model citizen who should be held up as an example of successful rehabilitation rather than be used as a scapegoat. Titus Exhibit 13.

A. Testimony of Dr. Douglas Allmon.

98. Dr. Douglas J. Allmon conducted a psychosexual evaluation of Mr. Titus. Titus Exhibit 2. Dr. Allmon has a PhD in Counseling Psychology from the University of Washington, Seattle, Washington. He is a Clinical Assistant Professor, Psychology Department, University of Washington. He is a member of the Association for the Treatment of Sex Abusers (ATSA). Dr. Allmon is also a Washington State Certified Sex Offender Treatment Specialist. His experience in the treatment of sex offenders dates back to at least 1988. Titus Exhibit 2, pp. 15-17. He has treated some 4800 sex offenders with a re-offense rate below five percent. Tr. 981.

99. His report was dated December 5, 2007. The report was directed to whether Mr. Titus is in need of further treatment for sexual deviancy. Dr. Allmon explained that if Mr. Titus is not in need of further treatment, and that it follows that he is not likely to reoffend. Tr. 1019-22. He found no evidence that Mr. Titus is predisposed currently to behave in an anomalous way, including sexually. Tr. 959. He found no evidence of pedophilia in Mr. Titus during his evaluation. Tr. 959. Mr. Titus did not attempt to influence or manipulate the outcome of the evaluation favorably. Titus Exhibit 2, p. 7. Dr. Allmon examined what is in essence Bureau Exhibit 4. Dr. Allmon also delivered a battery of psychological tests: the Minnesota Multiphasic Personality Inventory- II (MMPI-2), the Michigan Alcohol Screening Test (MAST); Beck Depression inventory (BDI); Gambрил & Richie Assertion Questionnaire (AI); 16 – PF/Clinical Analysis Questionnaire (16-PF/CAQ); Hanson/Gizzarelli/Scott Sexual Attitudes Test; Incomplete Sentence Blank – Modified (ISB-M). These tests were completed under Dr. Allmon's supervision. Dr. Allmon also conducted a Structured Clinical Interview. Titus Exhibit 2, p.8.

100. The MMPI-2 and the 16-PF are widely recognized psychological inventories *which are supported by extensive normative research which has been published in professional journals*. The remaining inventories have been developed for use as a convenience in eliciting specific information of psychological interest. In addition, Dr. Allmon had a polygraph examination administered by a specialist in accordance with usual community standards. Titus Exhibit 2, p.9.

101. Of four measures of anomalous responses among the psychometric inventories, none implied Mr. Titus attempted to portray himself in a light more favorable than the average person. In other words he did not seek to fake good. Dr. Allmon thus concluded that Mr. Titus underwent his psychological testing frankly and honestly. This conclusion was confirmed by the polygraph examination administered by Bud Killian in November of 2007 which addressed Mr. Titus's veracity in reporting his general history, sexual history and his criminal history. Titus Exhibit 2, p.9.

102. The results of Mr. Titus's testing are indicative of normal psychological functioning. Mr. Titus was diagnosed with neither an Axis I nor an Axis II disorder. Dr. Allmon concluded Mr. Titus's pre-adolescent and adolescent pedophilia appears to have been in remission for 15 years. He states Mr. Titus appears skilled in use of skills designed to avoid pedophilia. Dr. Allmon states Mr. Titus has expressed remorse for adversity he created during his adolescence related to his having acted out sexually. No evidence arose that Mr. Titus ought to undergo further treatment for sexual deviancy. He has demonstrated successfully for a fifteen year period his ability to manage any further predisposition toward pedophilia that might arise. Nothing arose during Mr. Titus's evaluation that should be viewed as his possessing a flawed character that would suggest he should not retain his amateur radio license. Titus Exhibit 2, pp.

10-12. In fact, Dr. Allmon testified that involvement in amateur radio would be quite excellent in avoiding isolation and that isolation would be something that a sex offender should avoid. Tr. 973-79. In Dr. Allmon's view Mr. Titus's involvement in amateur radio would be no more troubling than other activities in which he might join in. Dr. Allmon has never heard of amateur radio being used to attract a sex offense victim. Tr. 982.

II. Proposed Conclusions of Law.

1. This proceeding seeks to determine the effect on Mr. Titus's qualifications to hold an amateur radio license of his conviction more than 16 years ago when he was 18 of making immoral communications with a minor, and whether in light of the evidence adduced, Mr. Titus's amateur license should be revoked. The Bureau had the burden of going forward with the evidence and the burden of proof in this proceeding. Findings, para. 1. The Bureau has not met its burden of proof to support a conclusion that Mr. Titus's license should be revoked.

2. The touchstone of the Commission's character policy is the issue of whether the licensee can be expected to fulfill his FCC responsibilities. *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 191-92 (D.C. Cir. 2000), The character policy is not focused on punishing an individual for past indiscretions that are not predictive of how the individual will fulfill his responsibilities as a Commission licensee. *Id.* It looks at criminal convictions on the assumption that if the individual is willing to commit a serious criminal violation, a substantial doubt is raised whether the Commission can rely on the individual to follow the Communications Act and the rules applicable to his FCC license. *Id.*

3. As the factual findings show, Mr. Titus has not been charged or convicted of another crime since serving and completing his 25 month sentence. Findings paras. 59-64. Moreover, it has not been alleged or found that Mr. Titus has violated any FCC rule or policy,

nor any provision of the Communications Act of 1934, as amended. To the contrary, the evidence shows Mr. Titus has gone about his business like any other citizen. He works to support himself. He has friends. He seeks appropriate relationships. Findings, paras. 59-97.

4. Mr. Titus lives an alternate lifestyle sexually. He is gay. Some might find his lifestyle distasteful; some even sinful. But the United States Supreme Court has held that Mr. Titus has a constitutional right to practice a homosexual lifestyle and that should be the end of any consideration of his lifestyle, as long as it involves consenting adults. *See Lawrence v. Texas*, 539 U.S. 558 (2003).

5. The evidence is uncontroverted that Mr. Titus's sexual orientation is toward adults – male adults, but adults nonetheless. Findings, paras. 64, 68, 98-102. The Bureau has come forward with no evidence that Mr. Titus has had any inappropriate contact with minors – defined by Washington State law as persons under the age of 16 years. Mr. Titus testified his sexual interest is in adult males. Findings, para. 68. This is what he informed Dr. Allmon, and Dr. Allmon testified that Mr. Titus scored truthful under both the psychological tests he administered and under polygraph testing administered by Bud Killian. Findings, paras. 99-102.

6. The Bureau's case, such as it is, is based on speculation that Mr. Titus is at a high risk to reoffend based on his having been declared a level 3 sex offender by Detective Robert Shilling. Detective Shilling admits, however, that most sex offenders do not reoffend and that Washington State has an even lower rate of reoffense, a fact confirmed by Dr. Allmon. Findings, para. 19, Tr. 967. Moreover, the basis pursuant to which Mr. Titus has been labeled a level 3 sex offender lacks any rational scientific support. Findings, paras. 29-41.

7. Detective Shilling admitted as much under cross examination. He testified that the initial characterization of Mr. Titus as a level 2 offender was made by a committee without

any scientific basis. In turn, it was his quest for a scientific basis that led Detective Shilling to help write legislation for the State of Washington mandating an actuarial tool to help the Washington End of Sentence Review Committee make a reasoned determination of sex offender status level when sex offenders are released from confinement. Following enactment of that legislation, Detective Shilling was principally involved in choosing the components of the actuarial tool for the State of Washington, the WaSOST. Findings, para. 29. Incredibly, however, when Detective Shilling re-evaluated Mr. Titus in 2004 following a report of his being questioned by Mercer Island police officers, Detective Shilling raised Mr. Titus's sex offender status to a level 3 without doing a WaSOST on Mr. Titus. Only after this hearing was ordered, depositions were completed and discovery exchanged did Detective Shilling prepare a WaSOST on Mr. Titus to support his previous seat of the pants decision to raise Mr. Titus to the highest sex offender level. Findings, para. 41.

8. The WaSOST Detective Shilling prepared cannot be credited by the presiding officer for any of several reasons. First, it is clear from the contest that Detective Shilling prepared the WaSOST on Mr. Titus to support his previous conclusion that Mr. Titus was at a high risk of reoffense. Given this, it can hardly be considered that Detective Shilling was an objective scorer. Second, the WaSOST was specifically formulated to assess the risk of reoffense when a sex offender is released from confinement, not 16 years after the individual has lived an offense free life. Third, Detective Shilling specifically testified that evaluations of sex offenders should be made by professionals such as psychologists, psychiatrists or sex offender researchers. Despite his experience with respect to community notification programs, he has none of these credentials. Fourth, Detective Shilling candidly admitted there are serious problems with the WaSOST. These include that it is predominately based on the MnSOST and

that Dr. Epperson who created the MnSOST: (1) does not support its continued use; (2) does not support the tool any longer; (3) has not been cross validated the tool. Fifth, the WSIPP studied the WaSOST and found it wanting in several ways, including that the notification and assessment scores had little or no accuracy in predicting recidivism and the notification levels did not classify offenders into groups that accurately reflect their risk for reoffending. Sixth, and most distressing, is both Detective Shilling's and the Bureau's failure to acknowledge these documented shortcomings of the WaSOST in the direct testimony. At the very least, this omission was a material fact bearing on the credibility of Detective Shillings' conclusions which candor required to be disclosed. The omission further, however, suggests a distinct bias against Mr. Titus. Findings, pars. 29-38.

9. Nor can Detective Shilling's action raising Mr. Titus's sex offender level from 2 to 3 be given credence. The decision was based on two incidents, neither of which resulted in a charge, or an arrest, much less a conviction, and in any event, neither involved to the slightest degree any hint of a sex offense. In one case, he simply got into a shouting match with a woman who backed into his vehicle and grabbed her hand to remove it from his face when she would not. In the other case, he was found alone using the bathroom in a park after visiting his friend who lived on Mercer Island. A *voluntary* search of his vehicle, to look for paint ball evidence, revealed a flash light, and a hat that said "Sheriff," which his other friend, a deputy named Angie, had given him. In addition, he was wearing a necklace with a small medallion the size of a nickel with a replica of a King County Sheriff's badge which Angie had also given him. Findings, para. 39-41,

10. Detective Shilling speculated from these incidents that Mr. Titus was attempting to impersonate a police officer. Findings, para. 39. Detective Shilling was not at either of those

incidents. The only witness who was there who testified was Mr. Titus and he fully explained *the circumstances of both events*. *The Bureau did not see fit timely to offer testimony of any actual witness to either of these events*. Moreover, nothing is even alleged to have happened during these two incidents related to minors, to sex offenses, or to amateur radio. These two incidents are totally irrelevant to this proceeding – Detective Shilling’s suspicions notwithstanding.

11. The guiding precedent for evaluating this case is the Commission’s 1986 Character Policy Statement. *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (Statement). The statement announced that the FCC’s character analysis would focus on “misconduct which violates the Communications Act or a Commission rule or policy, and ... certain specified non-FCC misconduct which demonstrate[s] the proclivity of an applicant to deal truthfully with the Commission and to comply with [its] rules and policies.” *Id.* at 1190-91. The relevant non-FCC misconduct was limited to adjudicated cases involving: fraudulent representations to government agencies, criminal false statements or dishonesty, and broadcast-related violations of antitrust laws or other laws concerning competition. *See id.* at 1195-1203.

12. The Statement also listed mitigating factors that the Commission would consider in evaluating specific acts of misconduct. *See id.* at 1227-28. In 1990, the FCC determined that its 1986 policy had taken “an overly narrow view of the range of misconduct that should be relevant in licensing decisions.” *Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCCR 3252, 3252 (1990 Statement). It therefore amended that policy to state that “we believe a propensity to comply with the law generally is relevant to the Commission’s public interest analysis, and that an applicant’s or licensee’s willingness to violate other laws, and, in

particular, to commit felonies, also bears on our confidence that an applicant or licensee will conform to FCC rules and policies.... Thus, evidence of any conviction for misconduct constituting a felony will be relevant to our analysis of an applicant's or licensee's character." *Id.*

13. The FCC further stated that although "not all convictions for serious crimes are equally probative" of propensity to obey the law, it would not "establish a 'hierarchy' of felonies that may arise in individual cases." *Id.* Rather, the Commission would analyze misconduct on a case-by-case basis through the examination of mitigating factors. The licensees' challenge to the legitimacy of the current character policy is threefold.

14. It is important to note that the character policy is not automatically to disqualify a license holder or applicant who commits a felony, but rather to consider the felony as a relevant factor in evaluating propensity to obey the law. *See 1990 Statement, 5 FCCR at 3252.* Under this regime, while a felony conviction is certainly a factor to be considered, it is by no means a dispositive factor, and all such convictions may not be equally probative, as the FCC recognizes. *See 1990 Statement, 5 FCC Rcd at 3252.* But it is hard to see the argument that a felony conviction is not relevant at all.

15. This case should be distinguished from *Contemporary Media, Inc.*, 13 FCC Rcd 14437 (1998) on several counts. First, the conduct at issue in that case was much more serious. The licensee principal in that case was charged with eight felony counts of sexual assaults on minors and four felony counts of forcible sodomy on the children. The sexual abuse occurred over a five year period. The subject was convicted of a total of 12 felony counts and sentenced to a total of 84 years in prison. He was in prison at the time of the revocation proceeding. *See Contemporary Media, Inc. v. FCC, 214 F.2d at 195.* Furthermore the licensee was found to have

made material misrepresentations to the Commission following the subject's arrest to the effect that he had been excluded from station management. *Id.* at 193-94.

16. Here although Mr. Titus's crime was serious, it did not involve a sexual assault. Rather it involved an attempt to convince a minor to display his sexual organ without the use of force. While a serious offense, it simply does not rise to the level of the violent sexual assaults present in the *Contemporary Media* case. The Bureau will undoubtedly argue that Mr. Titus's adjudications as a minor must be considered as well. However, acts as a juvenile are of a wholly different category than acts as an adult.

17. Moreover, Mr. Titus's conviction happened more than 16 years ago and the juvenile acts are of course even more remote in time, occurring some 20 years or more ago. The Commission has made it plain many times that convictions occurring well in the past are of considerably less importance under the Character Policy than recent convictions. *See, e.g., 1990 Statement, 5 FCC Rcd at 3252.*

18. Indeed, the fact that Mr. Titus has gone some 16 years without reoffending is compelling evidence of his rehabilitation. Dr. Allmon's testimony clearly shows Mr. Titus's rehabilitation. He scored in the normal range on the various psychological tests administered. He did not show deception on these tests or on a polygraph examination. He was open with Dr. Allmon concerning his sexual history and desires. Dr. Allmon confirmed Mr. Titus is not a pedophile; his interest sexually is not in minors, but in adults.

19. Even more compelling evidence of his rehabilitation are the character witness statements provided by law enforcement personnel and others that while they are aware of Mr. Titus's past sex offense history, he has been an exemplary citizen both with regard to amateur radio and in general and he has shown no sexual interest in minors.

20. A further critical distinguishing point between this case and *Contemporary Media* is the absence of misrepresentation or lack of candor. In affirming the Commission's decision to revoke the license of *Contemporary Media*, the court relied heavily on the concurrent misrepresentation finding, stating "Moreover, the convictions were not the sole ground for the revocation decision as they were in [*Willett v. ICC*, 710 F.2d 861 (D.C. Cir. 1983) in which the court reversed a license revocation based on the sole proprietor's conviction for second degree murder and conspiracy to distribute a controlled substance] ; here the licensees were also found to have violated the Commission's candor requirements in connection with the very matter now before us." 214 F.3d at 193-94. Mr. Titus on the other hand has been forthright in his testimony. He answered everything put to him during an exhaustive cross examination forthrightly. To be sure he could not remember all the details of events occurring some 20 or more years ago, some when he was a small child. However, it is perfectly normal not to remember details of events that long ago. Lack of a perfect memory does not equal lack of candor. Anyone would have a difficult time remembering the details of events happening so long ago. Moreover, it is a natural part of the healing process for Mr. Titus to avoid focusing on such events and to look forward rather than backward.

21. In addition to considerations of remoteness in time and rehabilitation – each of which apply here -- the FCC's character policy considers the licensees overall record of compliance with FCC rules and policies. *1990 Policy Statement*. Here there is absolutely no dispute that Mr. Titus has been a fully compliant licensee. The Bureau introduced no evidence that Mr. Titus has ever violated Part 97 or the Communications Act. Indeed, the testimony of several witnesses is to the effect that Mr. Titus is a credit to the amateur radio community. He has labored hard and long to advance the amateur service, from organizing the MicroHAMs club

at Microsoft to his participation in ARES/RACES. He operates a repeater system in the Seattle area which provides excellent coverage and which is available for emergency communications in the event of a disaster. These facts aptly demonstrate that Mr. Titus is a credit to the amateur service despite his past felony conviction. It simply would not serve the public interest to revoke his amateur license.

22. Underlying the Bureau's theory of the prosecution of this proceeding is the fear that Mr. Titus would somehow use his amateur radio license to attract and sexual abuse a minor. That fear is not supported by any evidence. Putting aside the uncontroverted evidence that Mr. Titus is not interested sexually in minors, the Bureau has not shown there is any realistic possibility that such a circumstance could occur or has ever occurred. Detective Shilling is unaware of any case in which a sex offender has attracted his victim through amateur radio. Mr. Schurman could not cite any such example. Chris Imlay who testified on behalf of ARRL did not cite any such example. Dr. Allmon, who has treated some 4800 sex offenders, was not aware of any such instance. The Bureau has simply not come forward with any evidence that supports the underlying rationale for the designation of this revocation proceeding.

23. Given Mr. Titus's 16 year plus record of no criminal offense, the evidence of rehabilitation, the evidence of his commitment and contributions to the amateur service, his absolutely compliance with Part 97, his candor, honesty and truthfulness in this proceeding, and the total lack of any evidence that amateur radio has ever been used as a means to facilitate the sexual abuse of a minor, the conclusion that Mr. Titus's license to operate his amateur radio station should not be revoked is manifest.

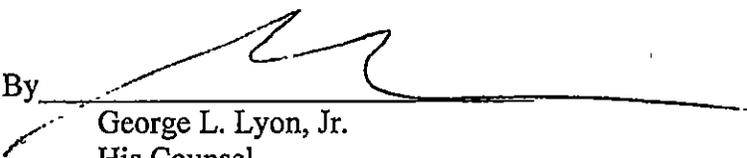
III. ULTIMATE CONCLUSION.

Base on the record developed in this proceeding, the amateur radio license of David L. Titus should not be revoked.

Respectfully submitted

DAVID L. TITUS

By



George L. Lyon, Jr.
His Counsel

Lukas, Nace, Gutierrez & Sachs, LLP
1650 Tysons Blvd., Suite 1500
McLean, Virginia 22102
(202) 828-9472
February 27, 2009

CERTIFICATE OF SERVICE

I, Donna L. Brown, hereby certify that on this 27th day of February 2009, served by First

Class Mail and email copies of the foregoing document on:

William Knowles Kellett, Esquire
Judy Lancaster, Esquire
Federal Communications Commission
445 12th Street, SW, Room 4-C330
Washington, DC 20554

Chief Administrative Law Judge Richard L. Sippel
Federal Communications Commission
445 12th Street, SW, Room 1-C768
Washington, DC 20554


Donna L. Brown