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

FCC 10M-01  
08367

In the Matter of	)	WT Docket No. 08-20	MAILED
	)		
WILLIAM F. CROWELL	)	FCC File No. 0002928684	APR 15 2010
	)		
Application to Renew License for	)	File No. EB-08-IH-0434	FCC Mail Room
Amateur Radio Service Station W6WBJ	)		

**ORDER**

Issued: April 8, 2010

Released: April 8, 2010

**BACKGROUND**

1. William F. Crowell ("Mr. Crowell"), appellant for Amateur Radio license renewal, filed on January 14, 2009, *Applicant's Request for Permission to File Appeal from the Former Presiding Officer's<sup>1</sup> Interlocutory Rulings on Discovery.*<sup>2</sup> The rulings on which Mr. Crowell seeks appeal, and the authorities cited, are set forth below.

**A. INTERROGATORIES**

**Discovery Ruling**

*William F. Crowell, Memorandum Opinion and Order*, FCC 08M-59 (rel. Dec. 30, 2008) (Overruling Mr. Crowell's objections to *Enforcement Bureau's Motion to Compel Answers to Its First Set of Interrogatories to William F. Crowell*).

**Denial of General Objections**

- i. General Objections in Paragraphs 2-3, 5-7: Mr. Crowell provided no legal basis, and cites no legal authority to support his positions.<sup>3</sup>
- ii. General Objection in Paragraph 4: Mr. Crowell's use of the Internet and e-mails is relevant and material to the issue of Mr. Crowell's character. *See* 47 U.S.C. §

<sup>1</sup> Judge Arthur I. Steinberg retired in January 2009, and this case was assigned to the undersigned Presiding Judge. *See William F. Crowell, Reassignment Order*, FCC 09M-04 (rel. Jan. 8, 2009).

<sup>2</sup> *See William F. Crowell, Memorandum Opinion and Order*, FCC 08M-57 (rel. Dec. 31, 2008); *William F. Crowell, Memorandum Opinion and Order*, FCC 08M-59 (rel. Dec. 30, 2008); *William F. Crowell, Memorandum Opinion and Order*, FCC 08M-60 (rel. Dec. 31, 2008) [hereinafter "*Interlocutory Rulings*"].

<sup>3</sup> Interrogatories must meet the standards provided under Commission rules. *See* 47 C.F.R. § 1.311 (general provisions for discovery and preservation of evidence); 47 C.F.R. § 1.323 (procedure for interrogatories to parties).

308(b) (character is a factor in all applications for station licenses); 47 C.F.R. § 1.311(b) (scope of examination for discovery and preservation of evidence).

### **Denial of Specific Objections**

iii. Specific Objections in Paragraphs 8, 12-13: Information sought found to be relevant because it “appears reasonably calculated to lead to the discovery of admissible evidence.” 47 C.F.R. § 1.311(b) (scope of examination for discovery and preservation of evidence).

### **Discovery Ruling**

*William F. Crowell, Memorandum Opinion and Order, FCC 08M-57 (rel. Dec. 31, 2008) (Bureau’s objections sustained to Applicant’s Second Motion to Compel Enforcement Bureau to Answer His First Set of Interrogatories filed by Mr. Crowell).*

### **Denial of Specific Objections**

i. Paragraph 2: Bureau is not required to disclose information until the Exhibit Exchange Date (identify persons Bureau intends to call as a witness and identify documents Bureau intends to submit into evidence).

ii. Paragraphs 3, 9: Information sought does not “appear[ ] reasonably calculated to lead to the discovery of admissible evidence.” *See* 47 C.F.R. § 1.311(b) (scope of examination for discovery and preservation of evidence).

iii. Paragraph 4: Requests are argumentative. *See* 47 C.F.R. § 1.311 (general provisions for discovery and preservation of evidence); 47 C.F.R. § 1.323 (procedure for interrogatories to parties).

iv. Paragraph 5: Interrogatories are in actuality requests for admission of facts. *See* 47 C.F.R. § 1.246 (procedure for admission of facts and genuineness of documents). *See also* 47 C.F.R. § 1.311 (general provisions for discovery and preservation of evidence).

v. Paragraph 6: Interrogatories call for legal analysis and/or conclusions and are not proper matters for discovery. *See* 47 C.F.R. § 1.311(b) (scope of examination for discovery and preservation of evidence).

vi. Paragraph 7: Bureau answers are sufficiently responsive. *See* 47 C.F.R. § 1.323(b) (requiring answers to interrogatories to be “answered separately and fully”); 47 C.F.R. § 1.323 (procedure for interrogatories to parties).

vii. Paragraph 8: Mr. Crowell’s request for production of documents from Bureau is not permissible. *See* 47 C.F.R. § 1.325(b) (procedure for production of Commission documents). *See also* 47 C.F.R. § 1.311(b)(3) (Commission records are not discoverable under § 1.325).

viii. Paragraph 10: Information sought has already been disclosed in the *Hearing Designation Order*. *See Hearing Designation Order, 23 FCC Rcd 1865 (WTB 2008)*. *See also* 47 C.F.R. § 1.323 (procedure for interrogatories to parties).

ix. Paragraph 12: Information sought exceeds the bounds of permissible discovery. *See* 47 C.F.R. § 1.311(b)(4) (procedure for interrogatories addressed to

Commission personnel).

## B. PRODUCTION OF DOCUMENTS

### Discovery Ruling

*William F. Crowell, Memorandum Opinion and Order*, FCC 08M-60 (rel. Dec. 31, 2008) (Objections to Enforcement Bureau's Motion to Compel Responses to Its First Request for Production of Documents).

#### Denial of General Objections

- i. Paragraphs 2-3, 5-6: Mr. Crowell provided no legal basis, and cites no legal authority to support his positions.
- ii. Paragraph 4: Documents related to Mr. Crowell's use of the Internet and e-mails are relevant to the issue of Mr. Crowell's character. *See* 47 U.S.C. § 308(b) (character is a factor in all applications for station licenses). *See also* 47 C.F.R. § 1.311(b) (scope of examination for discovery and preservation of evidence).

#### Denial of Specific Objections

- iii. Paragraph 7: Information sought found to be relevant because it "appears reasonably calculated to lead to the discovery of admissible evidence." 47 C.F.R. § 1.311(b) (scope of examination for discovery and preservation of evidence).
- iv. Paragraphs 8, 11: Documents are deemed relevant and Mr. Crowell is directed to produce documents (a) referred to by Mr. Crowell but which he failed to provide, or (b) documents Mr. Crowell referred to but failed to include as attachments.<sup>4</sup>
- v. Paragraph 9: Mr. Crowell is required to comply with Bureau's *Request for Production of Documents* because many of the documents already produced by Mr. Crowell are unresponsive to Bureau requests. *See* 47 C.F.R. § 1.325 (providing for discovery and production of documents which "constitute or contain evidence within the scope of the examination"). *See also* 47 C.F.R. § 1.311(b) (scope of examination for discovery and preservation of evidence).

## DISCUSSION

2. Appeals from *Interlocutory Rulings on Discovery* are allowed only by permission of the Presiding Judge, and therefore, Mr. Crowell must first file a request for permission to seek appeal. And the request must be filed within 5 days after the order is released from which an appeal is sought. 47 C.F.R. § 1.301(b). The request must show that the appeal "presents a new or novel question of law or policy and that the ruling[s] [are] such that error would be likely to

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<sup>4</sup> Documents must be produced in discovery which meet the standards provided under Commission rules. *See* 47 C.F.R. § 1.325 (providing for discovery and production of documents which "constitute or contain evidence within the scope of the examination"); 47 C.F.R. § 1.311(b) (scope of examination for discovery and preservation of evidence).

require remand should the appeal be deferred and raised as an exception.” *Id.* Mr. Crowell filed his request on January 14, 2009, while the *Interlocutory Rulings* had been released on December 30 and December 31, 2008. The filing date of Mr. Crowell’s request exceeds the 5-day limitation (5 business days), by a factor of 7 and 6 days as counted from the respective deadline dates.<sup>5</sup> Thus, Mr. Crowell failed to file his request for appeal timely, *i.e.* within the time required under Commission rules. In addition, there has been no showing by Mr. Crowell that an appeal of these interlocutory rulings in any way “presents a new or novel question of law.” To the contrary, it is determined here that there is no novel question of law or policy raised by Mr. Crowell, and therefore, there is no merit to Mr. Crowell’s request for appeal, and his request for appeal must be denied.<sup>6</sup>

## RULINGS

Accordingly, IT IS ORDERED that *Applicant’s Request for Permission to File Appeal from the Former Presiding Officer’s Interlocutory Rulings on Discovery* IS DENIED.

IT IS FURTHER ORDERED that in accordance with directives in *William F. Crowell, Memorandum Opinion and Order*, FCC 08M-57, FCC 08M-59, and FCC 08M-60,<sup>7</sup> Mr. Crowell SHALL PRODUCE documents and answer interrogatories requested by the Bureau on or before **Friday, April 30, 2010**.<sup>8</sup>

IT IS FURTHER ORDERED that on or before **Monday, May 17, 2010**, the parties SHALL FILE a JOINT STATUS REPORT setting forth:

- 1) Completeness of production of documents and answers to interrogatories;
- 2) Date estimated when all discovery is expected to be completed;<sup>9</sup>
- 3) Readiness for trial including any agreement on receiving any non-party testimony via teleconference; and
- 4) Proposed trial dates at the Federal Communications Commission in Washington, D.C.

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<sup>5</sup> When the required filing period is less than 7 days, intermediate holidays are not counted in determining the filing period. See 47 C.F.R. § 1.4(g). Thus, the deadline dates on which Mr. Crowell must have filed were January 7, 2009, and January 8, 2009.

<sup>6</sup> All pleadings filed on the matter of interlocutory appeal have been read and considered, including replies to responses and oppositions to replies that are too numerous to mention. Also, Mr. Crowell’s spurious First Amendment question is not an issue that was set for hearing and will not be addressed further in this proceeding. In the interest of finality, no further pleadings on interlocutory appeal may be filed hereafter by any party.

<sup>7</sup> See *Interlocutory Rulings*, *supra* note 2.

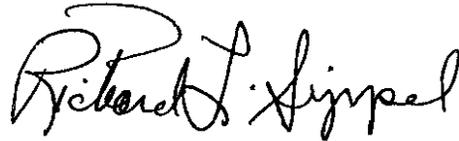
<sup>8</sup> The Bureau also must answer any unanswered interrogatories from Mr. Crowell in accordance with rulings in *William F. Crowell, Memorandum Opinion and Order*, FCC 08M-57 (rel. Dec. 31, 2008).

<sup>9</sup> “Completed” means that there is nothing more to be done, such as delivery of documents or completing a deposition.

IT IS FURTHER ORDERED that on **Monday, May 24, 2010**, the parties SHALL FILE TRIAL BRIEFS to include:

- 1) A concise proffer of what each party intends to prove;
- 2) A brief summary of what each witness is expected to testify to in support of each proffer of proof;
- 3) A list of the documents which will be moved into evidence, a brief description of each document, and a statement of relevance with respect to each document; and
- 4) Points and authorities on anticipated evidentiary, procedural, and substantive issues, citing only key cases and authorities relied on.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Chief Administrative Law Judge<sup>10 11</sup>

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<sup>10</sup> Pleadings concerning *Applicant's Third Motion to Compel Enforcement Bureau to Answer His First Set of Interrogatories* are under advisement.

<sup>11</sup> Courtesy copies are e-mailed to Bureau counsel and to Mr. Crowell on issuance.