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MAY 17 2010
Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	EB Docket No. 07-13
	)	
DAVID L. TITUS	)	FRN No. 0002074797
	)	File No. EB-06-IH-5048
Amateur Radio Operator and Licensee of	)	
Amateur Radio Station KB7ILD	)	

To: The Commission

ENFORCEMENT BUREAU'S
OPPOSITION TO MOTION TO ACCEPT UNAUTHORIZED REPLY

The Chief, Enforcement Bureau, by her attorneys hereby opposes the Motion to Accept Reply to Opposition to Motion to Enlarge the Time to File Reply to Exceptions to Initial Decision ("Motion"), filed on May 11, 2010, by David L. Titus ("Titus"). As demonstrated below, Titus's Motion is proscribed by the Commission's rules and should be summarily rejected.

On April 8, 2010, the Bureau filed its Exceptions to the Initial Decision in this case in a timely manner. Thereafter, Titus submitted a reply brief beyond the deadline specified in Section 1.277 of the Commission's Rules, 47. C.F.R. § 1.277. The Bureau, on April 30, 2010, properly opposed Titus's late-filed reply pleading as procedurally defective. The Bureau demonstrated that Titus's "explanation" for filing his reply after the due date -- he forgot about it -- was inexcusable and, in any event, did not satisfy the "good cause" showing that the Commission requires for granting timely extensions of time; he did not even purport to show the "extenuating circumstances" necessary for acceptance of a late-filed pleading. Now, apparently in further defiance of the

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Commission's procedural rules, Titus has interposed yet another unauthorized pleading in an attempt to bolster his initial late-filed reply. The Commission should not countenance such tactics.

Titus does not reference any rule section that provides a lawful basis for filing his instant pleading. There is a good reason for this -- there is none. Section 1.294 of the Commission's rules explicitly provides that replies to oppositions in hearing cases "will not be entertained" except in certain circumstances, none of which are applicable here. The Bureau opposed Titus's request that the Commission accept his late-filed reply to its Exceptions on the basis that it was procedurally defective. The pleading cycle, as contemplated by the Commission's rules, should have ended there. The Commission's rules do not contemplate replies to oppositions in situations such as this one, and Titus has failed to show why he should be entitled to special relief in this instance.

Apart from the procedural infirmity that plagues Titus's instant pleading, it also is substantively unavailing. Titus claims, at page 2, that the Bureau failed to demonstrate that acceptance of his late-filed reply to the Bureau's Exceptions would be prejudicial. However, not only did the Bureau demonstrate otherwise (see the Bureau's Opposition to Motion to Accept Late-Filed Reply, at 2-3), Titus's argument turns the "good cause" standard on its head. The Bureau does not have the burden of showing why Titus's late filed pleading should not be accepted; rather, Titus bears the responsibility of demonstrating to the Commission why he is entitled to extraordinary relief. At a minimum, Titus needed to show "good cause" for acceptance of his belatedly-filed submission. His sole reason for missing the deadline does not provide anywhere near the

level of the justification required for acceptance of a late-filed pleading in a hearing proceeding.

Titus also claims that acceptance of his late-filed reply to the Bureau's Exceptions would serve the public interest. In support, Titus argues that such acceptance "will afford [him] the opportunity to respond to and correct the erroneous arguments contained in the Exceptions." He also claims that it would be "inequitable and unduly prejudicial" not to consider his late-filed reply. Titus's attempt to invoke the "public interest" as justification for his personal dereliction is specious. Titus, who at all relevant times was represented by experienced communications counsel, had a full and fair opportunity to respond to the Bureau's Exceptions in the form of a timely-filed submission. He did not avail himself of that opportunity or assert a reasonable justification for such inaction. Rather, he requested that the Commission embrace his lackluster excuse for missing a filing deadline, essentially ignore its long-standing "good cause" standard, and grant him extraordinary relief. Such a precedent would be untenable.

The public interest would be served by ensuring that individuals who avail themselves of the Commission's processes abide by the Commission's rules -- procedural and otherwise. Not only was there no justification for accepting Titus's late filed reply to the Bureau's Exceptions, there is no justification for accepting his instant unauthorized reply to the Bureau's opposition.

In the final analysis, Titus would have the Commission believe he is being victimized if it does not consider his late-filed reply to the Bureau's Exceptions. In truth, however, he is victim here only to his own failure to follow the Commission's clearly stated rules.

For the foregoing reasons, the Bureau opposes Titus's instant pleading and urges the Commission to reject it as procedurally defective.

Respectfully submitted,

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May 17, 2010

CERTIFICATE OF SERVICE

Judy Lancaster, counsel for the Enforcement Bureau, certifies that she has, on this 17th day of May 2010, served the foregoing "Opposition to Motion to Accept Unauthorized Reply" by delivery of a copy as follows.

Via First Class United States mail and email to:

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