

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

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

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

To: Marlene H. Dortch, Secretary
Federal Communications Commission

Attn: Richard L. Sippel,
Administrative Law Judge

APPLICANT'S TRIAL BRIEF

Pursuant to the Order of ALJ Sippel (FCC 10M-01, released April 8, 2010), Applicant hereby files and serves his Trial Brief.

Proffer No. 1: That I have been an amateur operator for almost 50 years (I was first licensed in 1960, at age 13), and I never had any problem with the FCC until the year 2000, when Riley Hollingsworth decided to become "Mr. Enforcement" after the Commission had largely neglected amateur enforcement for the previous 15 years.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: October 25, 1965 license for amateur station WA6LSF [Response to E.B.'s Request to Produce Documents (hereinafter "RRPD"), Exh. A-1] and March 12, 1997 license for amateur station N6AYJ (RRPD Exh. A-3); "Riley Hollingsworth at the ARRL SouthWest Division Convention", WorldRadio Report,

Supplemental Responses to Request to Produce Documents (hereinafter "SRRPD") Exh. B-17.

Applicable Points and Authorities: None.

Proffer No. 2: That during my entire period of licensure, I have neither encouraged anyone to violate the Commission's regulations, condoned such violations, nor had any connection or association with any bootleg, illegal or pirate radio station(s).

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: None.

Proffer No. 3: That I support Commission regulation of wireless communication, but I want the Commission's administration to be improved, and any criticisms I have made of the Commission or the Enforcement Bureau were for the purpose of securing such improved administration.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: None.

Proffer No. 4: That during my entire period of licensure as a radio amateur, I have always recognized the Commission's plenary jurisdiction over radio communications. For example, whenever I heard a fellow amateur threaten to take vigilante action against a suspected jammer or poor operator (it happens often), I have always counseled such persons not to take such action, but to instead respect the law, the Commission's pre-emption of radio regulation and its plenary jurisdiction to regulate radio issues by complaining to the Enforcement Bureau instead and letting the Bureau handle the matter.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: "Commerce clause" of the U.S. Constitution; Pulitzer Publishing Co. v. FCC, 94 F.2d 249, 251 (D.C. Cir, 1937); Federal Radio Commission v. Nelson Bros. Bond & Mortgage Co., 289 U.S. 266, 279 (1933) and National Broadcasting Co., Inc. v. U.S., 319 U.S. 190 (1943).

Proffer No. 5: That all statements and criticisms I have made of the Commission or of the Bureau, whether on the air or on the internet, were valid exercises of my free-speech rights under the First Amendment to the U.S. Constitution; are therefore irrelevant to prove my propensity for following Part 97's requirements; and therefore cannot serve as grounds for non-renewal of my license herein.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: First Amendment to U.S. Constitution; Perry v. Sinderman, 408 U.S. 593, 597-598 (1972)

Proffer No. 6: That I have never violated Part 97 by intentionally interfering with any other station. When operating my amateur station, I keep my transmissions short and to the point, and then I stand by to listen for other stations. For this reason alone, it is impossible for me to have interfered with any other station's transmissions, since they could say anything they wanted to after I finished my brief transmissions. Furthermore, the complaining stations had been talking to each other for long periods of time every day and had nothing new or important to say to each other anyway. They simply wanted to run me off the frequency and assign it to themselves exclusively.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: My responses to Hollingsworth's 2000 and 2006 warning letters, RRPD, Exhibits A-9 and A-17; Report of Raymond A. Kowalski, a former FCC Official, concerning his investigation into the jamming claims of the California amateur radio association known as "WESCARS" on the 40-meter amateur band; commonly known as "the Kowalski report".

Applicable Points and Authorities: Part 97, §97.101(d) requires actual interference with communications, and requires that such interference be willful or malicious in nature. These features were totally absent herein.

Proffer No. 7: That in obtaining my amateur license from the Commission, I only agreed to follow Part 97 and to be honest and candid in my dealings with the Commission. I never

agreed to waive my free-speech rights, nor did I ever receive any valuable consideration, or any consideration at all, from the Commission for waiving them.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: October 25, 1965 license for amateur station WA6LSF [Response to E.B.'s Request to Produce Documents (hereinafter "RRPD"), Exh. A-1] and March 12, 1997 license for amateur station N6AYJ (RRPD Exh. A-3); March 3, 1997 Application form (RRPD Exh. No. A-2) and February 28, 2007 Application form (RRPD Exh. No. A-5).

Applicable Points and Authorities: None.

Proffer No. 8: That an amateur radio license has no inherent pecuniary value because no specific frequency assignment accompanies the license grant; as a condition of obtaining their licenses, amateurs waive any claim, whether by license or otherwise, to the prior use of any frequency other than that conveyed by the license grant, as against the U.S. government; only two-way communications are permissible in the amateur service; amateurs cannot broadcast; and the amateur service is strictly non-remunerative in nature.

Summary of What Witness Will Testify: Applicant, as above, and as an expert on amateur radio law.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: 47 USC §304; Part 97, §§97.101(b) and 97.113; waiver printed on all Applications and amateur licenses of any claim of right to use any specific frequency.

Proffer No. 9: That there is no physical or technical scarcity of amateur radio frequencies; that one must actively seek out an amateur transmission in order to listen to it; and that amateur radio is not particularly child-friendly.

Summary of What Witness Will Testify: Applicant, as above, as an expert on amateur radio station operation. There are huge swaths of unused frequencies on every band because most conversations occur in just a few roundtable conversations. In order to listen to an amateur radio conversation, a short-wave listener would first have to seek out the correct frequency on his shortwave receiver, and then tune in the single-sideband transmissions carefully and precisely or

else they sound like Donald Duck. In other words, nobody listens to a ham radio conversation unless they specifically intend to do so. Most hams are older men, and youngsters really don't want to have much to do with them, so young people tend not to get involved in the hobby in the first place. Manifestly the amateur service is not "uniquely accessible" to children. In fact, youngsters think ham radio is extremely uncool, nerdy and geeky and in general they want nothing to do with the hobby.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: David Titus, KB7ILD, E.B. Docket No. 07-13, Initial Decision of Chief ALJ Sippel (FCC 10D-01, released March 9, 2010), page 17, ¶16.

Proffer No. 10: That in the year 2000, Hollingsworth sent me a warning notice which completely lacked merit, in that he couldn't even point out any actual violation of Part 97 by me; nor did he allege intentional interference or one-way communications; but via his public statements, press releases and the Bureau's website, he nevertheless gratuitously branded me as a "jammer" and exposed me to undeserved disrepute within the amateur community; and his doing so greatly worsened my relations with my fellow radio amateurs, even though I had not violated Part 97. Now, as part of its bootstrap argument, the Bureau claims I can't "get along" with my fellow amateurs! Hollingsworth's wrongful actions contaminated my relations with my fellow amateurs and evidence that I can't "get along" should be rejected.

Summary of What Witness Will Testify: Applicant, as above

Related Document that Will Be Introduced Into Evidence: August 21, 2000 warning letter (RRPD Exh. No. A-8).

Applicable Points and Authorities: Part 97, §97.1, cited in said warning notice, is merely the preamble to the Amateur Rules and contains no specific prohibitions or requirements, while §§97.101 and 97.113 provide the actual prohibitions and requirements in question, yet did not appear in said letter. Hollingsworth specifically charged neither intentional interference nor one-way transmissions. In other words, the warning notice didn't state a cognizable violation of Part 97, and therefore represented. merely an attempt to bluff me into adherence to Riley's Hollingsworth's vague and unintelligible notions of "good amateur practice".

Proffer No. 11: That in said 2000 warning notice, Hollingsworth illegally informed me

that I had to have the consent of all of the other participants in a roundtable conversation before I could enter same; that all of said other stations had to "acknowledge" me before I had a right to participate; and if that any other participant in the conversation deemed my comments "unsolicited and unwarranted" then I would then have to leave the conversation. This constituted an abuse of discretion as an illegal attempt by the Commission to delegate to a mere licensee its authority to grant my operating privileges, as well as the principle that the operating privileges of all amateurs holding a given class of license are identical.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: August 21, 2000 warning letter (RRPD Exh. No. A-8).

Applicable Points and Authorities: Part 97 contains no such requirements as those asserted by Hollingsworth. On the contrary, §97.101(b) requires amateur stations to *share* their assigned frequency bands. Clearly, the complaining amateurs were simply refusing to share, and Hollingsworth's warning letter essentially assigned them the frequency for their specific use in violation of §97.101(b) and denied its use to Applicant without due process. Part 97, §97.9(a) provides that every licensee has all of the operating privileges pertaining to his license grant and, in the absence of willful or malicious interference, does not permit one licensee to tell another licensee what frequency he can use.

Proffer No. 12: That before Hollingsworth sent me my 2000 warning notice, I had already solved the underlying problem by responsible application of the "self-policing" policy; that I had so informed Hollingsworth in an email which he failed to read, and that said notice was therefore irrelevant because it was stale when I received it.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: My August 31, 2000 response to Hollingsworth's warning notice (RRPD Exh. A-9).

Applicable Points and Authorities: None.

Proffer No. 13: That my reply to said 2000 warning notice was not "irrelevant and frivolous", as Hollingsworth claimed, but was instead relevant and responsive.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: My August 31, 2000 response to Hollingsworth's warning notice (RRPD Exh. A-9).

Applicable Points and Authorities: 47 USC §308(b) and Commission Rule of Practice and Procedure 1.17 (47 C.F.R., Chapter I, Part 1, Subpart A, §1.17) required me to be honest and candid in my response, and I would have been less than candid had I not pointed out how Hollingsworth was practicing the "Princess and the Pea" theory of amateur enforcement; *i.e.*, worrying about whether or not I was participating in certain roundtable conversations rather than locating actual jammers.

Proffer No. 14: That the stations complaining about me were themselves in violation of Section 304 of the Act and of Part 97, §97.101(b) because they refused to share the frequency with their fellow amateur operators.

Summary of What Witness Will Testify: Applicant, as above

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: 47 USC §304; Part 97, §97.9(a) provides that there are, as pertinent hereto, only 3 classes of license grant: General, Advanced and Amateur Extra, and that the operating privileges of all licensees of a given class of license are the same. It does not provide for or permit the type of "second-class citizenship" that Hollingsworth was trying to impose on Applicant; *i.e.*, that Applicant couldn't use certain frequencies contained in his license grant unless Hollingsworth happened to approve thereof. Also, Hollingsworth impermissibly waived the complainants' duty to comply with §97.101(b) in refusing to share the frequency.

Proffer No. 15: That the stations complaining against me created their own interference by refusing to share the frequency with me. They created the interference by wrongfully demanding that I go away, and then starting an argument with me when I refused to do so. I had the right to so refuse, and I merely exercised that right. I didn't create any interference; I merely defended my right to use the frequency once I had already been attacked.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: Part 97, §97.101(d).

Proffer No. 16: That the stations complaining about me were trying to illegally limit my license grant, since the Commission had granted me the authority to operate on the frequency and only the Commission can revoke said grant.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: Part 97, §97.9(a).

Proffer No. 17: That I have never transmitted indecent materials because the Commission has no enforceable indecency regulation, so I am free to say whatever I want on the amateur radio.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: *****None.

Proffer No. 18: That I have never transmitted music.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: None.

Proffer No. 19: That Hollingsworth illegally attempted to run me off the air by conspiring with other amateur operators to claim that I was interfering when I was not; by telling other amateurs that I was a jammer and not to talk to me; and by calling me vile names. Other amateurs thought that unless they complied with his demands and stopped talking to me, he would come after them the same way he came after me.

Summary of What Witnesses Will Testify: Applicant, as above. I will also cross-examine Hollingsworth on these subjects.

Related Document that Will Be Introduced Into Evidence: February 13, 2001 email from Orville Dalton, K6UEY to the BCW Group (SRRPD Exh. B-1); November 6, 2002 email from Riley Hollingsworth to Ben Gardner, KD7BCW (RRPD Exh. B-2) and the January 4, 2003 email from Hollingsworth's at his home computer to Ben Gardner (RRPD Exh. B-3).

Applicable Points and Authorities: None.

Proffer No. 20: That Hollingsworth granted jamming indulgences to his friends.

Summary of What Witnesses Will Testify: Applicant as above. I will also cross-examine Hollingsworth on this subject.

Related Document that Will Be Introduced Into Evidence: CQ Magazine interview with Hollingsworth, August 28, 2000 (RRPD Exh. B-16); WorldRadio Magazine on Hollingsworth at the ARRL Southwest Division Convention, September 7, 2000 (SRRPD Exh. B-17).

Applicable Points and Authorities: This was clearly an abuse of discretion. Even one proven instance of jamming warrants license revocation. Donald E. Gilbeau, N6OZ, P.R. Docket No. 81-172-173, Edward J. Kuhlmann, ALJ (1982); aff'd. former Review Board on August 12, 1982; decision by Review Board Member Blumenthal, FCC 82R-47.

Proffer No. 21: That Hollingsworth bragged to other amateurs that he never read anything I sent him.

Summary of What Witness Will Testify: Applicant, as above. I will also cross-examine Hollingsworth on this subject.

Related Document that Will Be Introduced Into Evidence: Hollingsworth's November 6, 2002 email to Ben Gardner, KD7BCW (RRPD Exh. B-2).

Applicable Points and Authorities: For a Commission official to deliberately refuse to consider matters stated by a licensee in his own defense is the most obvious kind of abuse of process and a denial of Applicant's due process.

Proffer No. 22: That Hollingsworth responded to my F.O.I.A. request by sending me a recording which he claimed showed me jamming, but even a novice operator could tell that I was not the one doing the jamming in the recording. When I pointed this out to Hollingsworth, he ignored me and used said recording to justify the issuance of the Hearing Designation Order herein. In doing so, Hollingsworth must have lied to Scot Stone because now the Bureau says it is not relying on said recording after all.

Summary of What Witness Will Testify: Applicant, as above. Expert witness Robert Weller of the FCC is expected to testify that it was clearly not Applicant who was jamming in said recording. I will also cross-examine Hollingsworth on this subject.

Related Document that Will Be Introduced Into Evidence: June 10, 2006 Response letter (RRPD Exh. A-17)

Applicable Points and Authorities: In its Supplemental Answers to my Interrogatories dated May 17, 2010, the Bureau admits that it is no longer relying on said recording. I believe that the Bureau used that recording to fool Scot Stone into issuing the Hearing Designation Order herein. It was probably also the one Riley Hollingsworth told Steve Wingate was "fake".

Proffer No. 23: That Hollingsworth made so many mistakes while he served as "SCARE" that they constitute a practice or pattern of conduct to prove his incompetence in performing the position, and that he either was unaware of Part 97's provisions or deliberately misinterpreted them in order to make his job easier.

Summary of What Witness Will Testify: Applicant will testify about the "phonetics fiasco"; about Hollingsworth recommending that hams violate §97.101(d) in order to run the so-called "intruders" off of the 10-meter band; about Hollingsworth's utter and complete failure to develop a logical, cogent or comprehensible method of harmonizing §97.101(b) with §97.101(d) in the context of a roundtable conversation; about his failure to realize that 146.52 mhz., the most popular talking frequency on the 2-meter band, is not, and never has been, a calling frequency; about his constant misrepresentations to the amateur community that their recordings could be used as evidence by the Commission; about his contamination of the evidence in his enforcement cases caused by his malicious attempts to publicly vilify amateurs to whom he had sent warning notices but against whom nothing had been proved; about his constant attempts to impose his own subjective values on the amateur community under a constantly-changing so-called "code of conduct"; and about his attempts to modify amateurs' licenses without following the procedure provided by Part 97, §97.27. I will cross-examine Hollingsworth on these subjects.

Related Document that Will Be Introduced Into Evidence: So called "codes of conduct" (SRRPD Exhs. B-19); SRRPD Exhs. B-20 and B-21; June 25, 2001 letter from Attorney George Lyon to Hollingsworth re: licensee Ted R. Sorenson, III (SRRPD Exh. B-23); "Identify With Your Call" (RAIN Report), RRPD Exh. C-1; 18 USC §1464; Bureau's present website announcement that it no longer publicizes first warning letters, etc. (SRRPD Exh. B-24).

Applicable Points and Authorities: §97.101(b);h §97.101(d); §97.27; §97.119(b)(2); 18 USC §1464 applies only to broadcasters.

Proffer No. 24: That Hollingsworth issued a series of warning letters to participants in such roundtable conversations, in which he was required to apply §97.101(b)'s requirement that amateurs share their assigned frequencies as it related to §97.101(d)'s prohibition against intentional interference. Said warning letters were totally inconsistent and indecipherable; really represented merely favors granted to his friends and punishment of stations he didn't happen to like; and “interpreted” §97.101(b) completely out of existence. This constituted an abuse of discretion.

Summary of What Witness Will Testify: Applicant, as above. I will also cross-examine Hollingsworth on this subject.

Related Document that Will Be Introduced Into Evidence: My warning letters received from Hollingsworth; W2VZJ Warning letter; eHam.net article, “FCC Reminds Licensee that All Frequencies Are Shared”, SRRPD Exhibit No. B-12.

Applicable Points and Authorities: Part 97, §§97.101(b) and 97.101(d).

Proffer No. 25: That because they wanted to make their jobs easier, and to attempt to justify the Bureau's 15 years of amateur enforcement inactivity, Hollingsworth and his boss, Richard Lee, deliberately violated Part 97's procedural requirements concerning license modification and re-testing, and denied many licensees the due process to which they were entitled under Part 97.

Summary of What Witness Will Testify: Applicant, as above. Hollingsworth will have to admit what he did on cross-examination. I also intend to ask him about Michael Delich, WA6PYN, who died after he received Hollingsworth's illegal notice of re-test.

Related Document that Will Be Introduced Into Evidence: June 25, 2001 letter from George Lyon, Esq. to Hollingsworth re: attempted illegal license modification of Ted R. Sorenson, III, KC6PQW (SRRPD Exh. B-23); re-test notices posted on Enforcement Bureau's website.

Applicable Points and Authorities: Part 97, §97.27(b) provides that licensees whose licenses are proposed for modification during their term are entitled to due process rights; Part 97, §97.519(d)(2) and (d)(3) provide that the Commission may only call in for re-test, during their license terms, amateurs who took their examinations from a Volunteer Examiner, while

Hollingsworth tried to re-test even amateurs who had taken their examinations before the Commission, from an Engineer In Charge of a Field Office.

Proffer No. 26: That, under color of law, Hollingsworth attempted to impose his own subjective standards of speech and behavior upon the amateur community, and implied that such standards had the force and effect of law, but that they actually had absolutely no basis in part 97.

Summary of What Witness Will Testify: Applicant, as above. I will also cross-examine Hollingsworth on this subject.

Related Document that Will Be Introduced Into Evidence: eham.net article, "Hollingsworth Suggests Steps to a Brighter Amateur Future" (SRRPD Exh. B-15); "The Amateur's Code", Brainerd Amateur Radio Club Newsletter, SRRPD Exh. B-19.

Applicable Points and Authorities: None.

Proffer No. 27: That Hollingsworth has publicly admitted that he suffers from insanity, but claims his admitted mental condition was only temporary. I intend to prove by his many illegal, wrongful and stupid actions that his admitted insanity is instead permanent in nature.

Summary of What Witness Will Testify: Applicant, as above. In addition, expert witness and FCC employee Robert Weller is expected to testify that, contrary to Hollingsworth's claims, standing next to his antenna couldn't have caused any brain damage due to exposure to high frequency radio emissions ("HF"), so his insanity must instead be organic and permanent in nature. I intend to cross-examine Riley Hollingsworth about his resulting total incompetence.

Related Document that Will Be Introduced Into Evidence: "Riley Hollingsworth: Is My Face Red?", Amateur Radio Newslines report, SRRPD Exh. B-20; "Riley: ID With Your Call" (RAIN Report), RRPD Exh. C-1.

Applicable Points and Authorities: None.

Proffer No. 28: That Hollingsworth told amateurs at ham conventions that the Enforcement Bureau had to scrap licensees' free-speech rights in order to "save the hobby"; i.e., that the ends ("saving" ham radio from the jammers after the Commission had been missing in action for 15 years) justify violating the U.S. Constitution.

Summary of What Witness Will Testify: Applicant, as above, and as an expert on amateur radio law. I will also cross-examine Hollingsworth on this subject.

Related Document that Will Be Introduced Into Evidence: "CQ Magazine Interviews Riley Hollingsworth" article, SRRPD Exh. B-16.

Applicable Points and Authorities: First Amendment to U.S. Constitution; Sable Communications of California, Inc. v. FCC, 492 U.S. 115 (1989); Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622 (1994) and Action for Children's Television v. FCC, 58 F.3d 654 (D.C. Cir., 1995).

Proffer No. 29: That when Hollingsworth began serving as "SCARE", he claimed that he was going to solve the jamming problem single-handedly, and told the amateur community it should feel free to send him complaints against their fellow amateurs; however, by the end of his tenure, he had given up on solving it and instead told amateurs to simply ignore the jamming. Therefore my position has been vindicated because Hollingsworth wound up agreeing with me that cracking down on the jamming problem simply makes it worse.

Summary of What Witness Will Testify: Applicant, as above, and as an expert on amateur radio law. I will also cross-examine Hollingsworth on this subject.

Related Document that Will Be Introduced Into Evidence: "An Evening With Riley Hollingsworth" QSL.NET article (SRRPD Exh. B-13); "An Open Letter to the Amateur Radio Community" QST Magazine article (SRRPD Exh. B-14); "Hollingsworth Suggests Steps to a Brighter Amateur Future" EHAM.NET article (SRRPD Exh. B-15); CQ Interviews Riley Hollingsworth, K4ZDH" CQ Magazine article (SRRPD Exh. B-16); "Riley Hollingsworth at the ARRL SouthWest Division Convention" WorldRadio article (SRRPD Exh. B-17); "Hollingsworth on RAIN" arnewsline.org article (SRRPD Exh. B-18); transcript of Hollingsworth's remarks to the FCC Forum at the 2007 Dayton Hamvention.

Proffer No. 30: That recordings made by other radio amateurs are not admissible in evidence herein.

Summary of What Witness Will Testify: Applicant, as above, and as an expert on amateur radio law. I will also cross-examine Hollingsworth on this subject.

Related Document that Will Be Introduced Into Evidence: Copies of Decisions in Boston

and Premus cases, previously provided.

Applicable Points and Authorities: To admit recordings made by other amateurs would violate Title 31 of the U.S. Code, §1342 as a donation of volunteer labor to the U.S. Government. The Commission recognized this fact by getting P.L. 97-259 passed by Congress, because among other things P.L. 97-259 added §154(f)(4) to the Communications Act [47 USC §154(f)(4)]. Section 154(f)(4) provided an exception to 31 USC §1342 for specially-trained volunteers, but after P.L. 97-259 was passed the Enforcement Bureau went on a 15-year hiatus, insofar as amateur enforcement is concerned, and therefore never implemented the volunteer program. This means that none of the recordings listed by the Bureau in its Answers to my Interrogatories is admissible in evidence herein, since none of them was made by Commission personnel or §154(f)(4) volunteers.

Proffer No. 31: That none of the complaints filed with the Commission against me constituted Part 97 violations in the first instance.

Summary of What Witness Will Testify: Applicant, that the Commission apparently has no screening process to weed out unmeritorious complaints, and takes enforcement action largely on the number of complaints received. I will also cross-examine Hollingsworth on this subject.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: Part 97, §97.101(b) and (d) and §97.113. "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Texas v. Johnson, 491 U.S. 397, 414 (1989).

Proffer No. 32: That the Bureau has been harassing me for 10 years now, but still has not been able to obtain an actual intercept of me violating Part 97, and that there is an easy explanation: I don't violate Part 97.

Summary of What Witness Will Testify: Applicant, as above. I will also cross-examine Hollingsworth on this subject.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: None.

Proffer No. 33: That, moreover, written complaints are inadmissible as hearsay because they were made out of court, are being offered to prove the truth of the matters asserted, and are inherently unreliable because amateurs are known to lie to the Commission when complaining about their fellow amateurs.

Summary of What Witness Will Testify: Applicant, as above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: Myron Henry Premus, 17 FCC 251 (1953) and Richard G. Boston, July 29, 1977 MO&O of Bureau Chief Higgenbotham; Riley Hollingsworth's admission to Steve Wingate that some of the complaints against him were fake.¹

Proffer No. 34: That none of the materials I posted on the internet constituted FCC-related activity, and that the Enforcement Bureau is estopped from claiming otherwise because Hollingsworth told amateurs to keep their disagreements and arguments off the air and on the internet instead, and I relied upon said representations to my detriment. I thought I was engaging in good amateur practice by keeping such matters on the internet, as Hollingsworth had suggested, but I didn't realize then that the Bureau's policies provide that no good deed by the licensee shall remain unpunished..

Summary of What Witness Will Testify: Applicant, as stated above.

Related Document that Will Be Introduced Into Evidence: See, for example, "Good Amateur Practice Means Never Having to Say You're Sorry", at <http://k9wzrepeater.org/riley.html>, which was originally published on the ARRL website. "According to Hollingsworth, "good amateur practice" means, among other things: ...Keeping personal conflicts off the air. Settle your arguments on the telephone, the internet or in person. Just keep them off the air."

Applicable Points and Authorities: Federal principles of equitable estoppel.

Proffer No. 35: That my facetious website, "hamjamming.com" did not condone jamming in the amateur service but instead attempted to discourage it.

Summary of What Witness Will Testify: Applicant will testify that, because his website took a thoughtful and nuanced approach to the long-standing jamming problem, it was the only

¹ Applicant's Supplemental Responses to Enforcement Bureau's First Request for Production of Documents, Exhibit B-25.

amateur radio website in existence that had any substantial degree of credibility with the recent influx of no-code, easy-exam operators who tend to become disillusioned with amateur radio when they are rejected by the old fogies on the air, and therefore start to jam. The message of said website was that there was nothing new in the world of amateur jamming; that it had all been done before, with more persistence and panache, by jammers of the past, and that current would-be jammers would just be re-inventing the wheel if they were to jam. It recommended that rather than jamming, would-be jammers instead download and listen, off the air, to recordings of past jamming stars and try harder to get to know their fellow amateurs on the air instead.

Related Document that Will Be Introduced Into Evidence: The plain text of the first page of the former hamjamming.com website so states.

Applicable Points and Authorities: None.

Proffer No. 36: That the Commission has no authority to regulate the speech of amateur radio operators because no valuable franchise or specific frequency assignment is conveyed by the license grant; because amateurs can transmit only two-way communications (i.e., broadcasting is prohibited); the amateur service is strictly non-remunerative in nature; there is no "marketplace" for amateur transmissions; and because, since amateurs are talking to each other, there is no "public" for the Commission to protect.

Summary of What Witness Will Testify: Applicant, as an expert on amateur radio law.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: Part 97, §§97.101(b), 97.113; Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969); F.C.C. v. League of Womens' Voters, 468 U.S. 364 (1984); Group W. Cable, Inc. v. City of Santa Cruz, 669 F.Supp. 954, 965-966 (N.D. Cal. 1987)

Proffer No. 37: That the Commission's indecency rules don't apply to the amateur radio service.

Summary of What Witness Will Testify: Applicant, as an expert witness on amateur radio law.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: the Commission's Policy Statement, released April 6, 2001 (FCC 01-90; 16 FCC Record 7999) don't apply to the amateur radio service because Title

18 of the U.S. Code, §1464, on which they are based, clearly states it applies only to broadcasters. Furthermore, said Policy Statement specifically states that it applies only to the broadcast industry. Amateur operators are *prohibited* from broadcasting. Part 97, §97.113(b).

Proffer No. 38: That the Commission's character rule pronouncements don't apply to the amateur radio service.

Summary of What Witness Will Testify: Applicant, as an expert witness on amateur radio law.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: the Commission's character rule statements say on their face that they apply only to broadcasters. Amateur operators are *prohibited* from broadcasting. Part 97, §97.113(b).

Proffer No. 39: That even if the Commission *could* regulate the speech of radio amateurs, it constitutes an abuse of discretion for the Commission to grant commercial broadcasters a safe harbor to transmit indecent materials at certain times while refusing to grant such a safe harbor period to the amateur radio service.

Summary of What Witness Will Testify: Applicant, as an expert on amateur radio law.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: Action for Children's Television v. FCC, 58 F.3d 654 (D.C. Cir., 1995); FCC v. Pacifica Foundation, 438 U.S. 726, by its terms applied only to the broadcast services.

Proffer No. 40: That the Enforcement Bureau discovered the complaints it received from Art Bell and his sycophants were phony, but it proceeded against Applicant anyway, and that this constitutes an abuse of discretion. The Bureau's attempt to claim that Scot Stone independently determined to issue the Hearing Designation Order fails because he must necessarily have relied on information from the Bureau in doing so.

Summary of What Witness Will Testify: Applicant, as stated above.

Related Document that Will Be Introduced Into Evidence: My June 10, 2006 response to Hollingsworth's second enforcement letter (RRPD, Exh. A-17; complaint withdrawal letters of

Ed McKnight and Trish Ray (SRRPD Exhs. B-6 and B-7).

Applicable Points and Authorities: In its Supplemental Answer to my Interrogatory No. 113, the Enforcement Bureau now admits that it is not relying on the recordings provided by Art Bell, on which it has previously based its case.

Proffer No. 41: That the Enforcement Bureau's policy of enforcing only Part 97, §97.101(b), and not §97.101(c), constitutes an abuse of discretion because the Bureau thereby fails to give any effect to §97.101(c) whatsoever. This violates established rules of statutory construction.

Summary of What Witness Will Testify: Applicant, as an expert on amateur radio law, as stated above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: Rules of statutory construction dictate that two regulations which interact must be interpreted in such a way as to harmonize their operation in order to give effect to both regulations, and that it is an abuse of discretion for a federal agency to apply only one of such interacting regulations while “interpreting” the other one completely out of existence. Part 97, §§97.101(b) and (d).

Proffer No. 42: That the Commission is denying me procedural due process by not filing my papers when received, but instead first sending them to an off-site facility to be irradiated due to the Commission's fear that the public will commit an act of terrorism against it by exposing its employees to anthrax spores through the mail, and that due to said irradiation procedure I cannot file my pleadings in a timely fashion herein.

Summary of What Witness Will Testify: I will testify and provide documentary evidence from the U.S. Postal Service that my papers are not being filed by the Commission Secretary until about 10 days after they are actually received.

Related Document that Will Be Introduced Into Evidence: USPS proofs of delivery.

Applicable Points and Authorities: The Commission Secretary is continually and repeatedly violating 47 CFR, Chapter I, Part 1, Subpart A, §1.7, which provides that documents are deemed filed upon receipt.

Proffer No. 43: That no character issue exists herein because I have never been charged or convicted of any crime, whether felony or misdemeanor. Since my conduct has always been strictly legal, it cannot give rise to a character issue. The Commission is not entitled to judge the social value of my strictly legal behavior because then no Commission licensee would ever know if his legal conduct was really legal or not. No factual predicate exists herein which would trigger the operation of the character rule in the first place. To allow the Bureau to inquire into my character constitutes an attempt to exercise unconstitutional authority since Congress cannot delegate boundless discretion to the agency, particularly where its licensees' free-speech rights are involved; and that the Commission's attempt to exercise such boundless discretion itself constitutes an abuse of discretion.

Summary of What Witness Will Testify: Applicant, as stated above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: The Commission's own character rule provides that only adjudicated felony offenses and fraudulent dealings with a government agency constitute evidence of bad character.

Proffer No. 44: That the Commission has never engaged in rulemaking, or promulgated any rules, which would provide any standards placing radio amateurs on notice of what otherwise-legal speech or behavior will invoke the operation of its character rule.

Summary of What Witness Will Testify: Applicant, as stated above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: Lewis v. Wilson, 253 F.2d 1077, 1080 (C.A.8-Mo. 2001)

Proffer No. 45: That the Commission has never engaged in rulemaking, or promulgated any rules, which would provide any standards placing radio amateurs on notice of how well they are required to "get along" with their fellow amateurs, or even what the term "getting along" with your fellow radio amateurs means in the first instance, in order to have their licenses renewed.

Summary of What Witness Will Testify: Applicant, as stated above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: Lewis v. Wilson, 253 F.2d 1077, 1080 (C.A.8-Mo.

2001)

Proffer No. 46: That the Bureau is trying to censor its amateur licensees' right to criticize the Commission by applying unconstitutional standards in the license renewal process.

Summary of What Witness Will Testify: Applicant, as stated above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 764; Weinberg v. City of Chicago, 310 F.3d 1029, 1044 (C.A.7-Ill. 2002); rehearing denied en banc 320 F.3d 682; *cert.* denied 540 U.S. 817.

Proffer No. 47: The Bureau's contention that indecency must be prohibited in amateur radio in order to protect the sensitivities of children fails. The "first blow" indecency theory doesn't apply because one must take determined and substantive action in order to receive amateur signals; amateur radio is not particularly child-friendly and free-speech is always a trade-off. It would be impossible to protect the free speech rights of amateur operators to use indecent language if the Commission tried to make it child-safe.

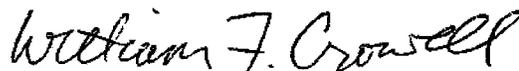
Summary of What Witness Will Testify: Applicant, as stated above.

Related Document that Will Be Introduced Into Evidence: None.

Applicable Points and Authorities: ALJ Sippel decided in David L. Titus, E.B. Docket No. 07-13, Initial Decision released March 9, 2010, that amateur radio is not child friendly.

Dated: October 15, 2010

Respectfully submitted,



William F. Crowell, Licensee/Applicant

CERTIFICATE OF SERVICE BY MAIL
[47 C.F.R. Part I, Subpart A, §1.47]

I am a citizen of the United States and a resident of El Dorado County, California. I am the Applicant-licensee herein. I am over the age of 18 years. My address is: 1110 Pleasant Valley Road, Diamond Springs, California 95619-9221.

On October 15, 2010 I served the foregoing Applicant's Trial Brief on all interested parties herein by placing true copies thereof, each enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Diamond Springs, California, addressed as follows:

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

P. Michele Ellison, Chief, Enforcement Bureau, Federal Communications Commission
445 - 12th Street, S.W., Washington, D.C. 20554

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

I further declare that, on this same date, I emailed electronic courtesy copies of the foregoing document to the Office of Administrative Law Judges and to Bureau Counsel.

I declare under penalty of perjury that the foregoing is true and correct, and that this proof of service was executed on October 15, 2010 at Diamond Springs, California.

William F. Crowell

William F. Crowell