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FCC 08M-60 07636

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

In the Matter of)	WT Docket No. 08-20	JAN -5.2009
WILLIAM F. CROWELL)	FCC File No. 0002928684	
Application to Renew License for Amateur Radio Service Station W6WBJ)		

MEMORANDUM OPINION AND ORDER

Issued: December 29, 2008

Released: December 31, 2008

1. Under consideration are Enforcement Bureau's Motion to Compel Responses to its First Request for Production of Documents, filed on June 4, 2008, by the Enforcement Bureau ("Bureau"); and Applicant's Opposition to Enforcement Bureau's Motion to Compel Responses to its First Request for Production of Documents, filed on June 17, 2008, by William F. Crowell ("Mr. Crowell").

2. <u>General Objections.</u> Mr. Crowell objects to each request for production of documents because the Bureau has objected "in bad faith" to almost all of his First Set of Interrogatories propounded to the Bureau. Through that conduct, Mr. Crowell argues, the Bureau "has violated the priority of discovery" and has "wrongfully prevented [him] from formulating his claims and defenses. *E.g.*, Applicant's Response to Document Request 1. These objections are overruled. They have no legal basis and Mr. Crowell cites no authority supporting his position. There is no requirement that the Bureau first answer his interrogatories before he responds to the Bureau's request for production of documents.

3. Mr. Crowell also objects to each request for production of documents on the basis that the Bureau "lacks the authority to compel the production of evidence before it has made a preliminary showing that it has actual intercepts evidencing a violation of Part 97 [of the Commission's Rules]." *E.g.*, Applicant's Response to Document Request 1. These objections are overruled. They, too, have no legal basis and Mr. Crowell cites no authority supporting his position. No such burden or condition precedent to conducting discovery exists.

4. Mr. Crowell further objects to several requests for production of documents because the Commission "has neither subject matter nor ancillary jurisdiction over the internet." *E.g.*, Applicant's Response to Document Request 6. These objections are overruled. The *Hearing Designation Order* in this proceeding, 23 FCC Red 1865 (WTB 2008) ("*HDO*"), makes it clear that Mr. Crowell's character is in question. *HDO* at 1866-67 (¶¶ 6, 9). Among the elements to be considered under this factor are Mr. Crowell's "apparent contempt for the Commission's regulatory authority," and whether he can be relied upon "to comply with the Commission's rules and policies in the future." *Id.* at 1867 (¶ 9). Mr. Crowell's use of the internet is clearly relevant and material under these factors.

5. In connection with document requests relating to the internet, Mr. Crowell also objects because a former Commission employee allegedly "repeatedly and specifically advised the amateur community to keep any disputation and questionable materials off the ham radio and put them on the internet instead." He further contends that the actions of Commission employees are

not equivalent to the actions of the Commission, and that Commission employees do not speak for the Commission. E.g., Applicant's Response to Document Requests 6, 12. These objections are overruled. Once again, they have no legal basis and Mr. Crowell cites no authority supporting his position.

6. Mr. Crowell objects to several requests for production of documents on the ground that "the Gommission may not deny a license based upon an unconstitutional premise," and that Commission review of the speech of radio amateurs (such as Mr. Crowell) violates their First Amendment rights to free speech and to petition the government for redress of grievances. *E.g.*, Applicant's Response to Document Request 10. These objections are overruled. Mr. Crowell's arguments are, at best, premature inasmuch as his application for renewal of license has not been denied. Therefore, his contentions provide no legitimate basis on which to preclude the Bureau from conducting discovery on the issues set forth in the *HDO*.

7. <u>Document Requests 1-6, 8-14, 19, 21.</u> Mr. Crowell's objections are overruled for the reasons stated in the General Objections section above. The documents requested "appear[] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules.

8. <u>Document Request 1.</u> Many of the documents produced by Mr. Crowell refer to attachments. However, the attachments were not provided. Mr. Crowell is directed to produce those attachments.

9. <u>Document Requests 2-3, 9.</u> The documents produced by Mr. Crowell are unresponsive to the Bureau's requests.

10. Document Requests 7, 15, 17-18, 20. Inasmuch as Mr. Crowell represented that no such documents exist, no further responses to these requests will be required.

11. <u>Document Request 8.</u> In response to this request, Mr. Crowell described several specific documents. However, the documents described were not, in fact produced. Mr. Crowell is directed to produce those documents.

12. <u>Document Requests 16, 22.</u> Mr. Crowell's objections are sustained. The information requested need not be disclosed until the Exhibit Exchange date.

Accordingly, IT IS ORDERED that the Enforcement Bureau's Motion to Compel Responses to its First Request for Production of Documents, filed by the Bureau on June 4, 2008, IS GRANTED to the extent discussed above and IS DENIED in all other respects.

IT IS FURTHER ORDERED that Mr. Crowell SHALL PRODUCE the documents requested by the Bureau on or before January 30, 2009, or within such other period of time as the parties may mutually agree.

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FEDERAL COMMUNICATIONS COMMISSION

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Arthur I. Steinberg Administrative Law Judge