

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

In the Matter of	)	WT Docket No. 08-20	
	)		
<b>WILLIAM F. CROWELL</b>	)	FCC File No. 0002928684	<b>FILED/ACCEPTED</b>
	)		
Application to Renew License for Amateur Radio	)	File No. EB-08-IH-0434	<b>JAN 21 2009</b>
Service Station W6WBJ	)		Federal Communications Commission Office of the Secretary

To: Marlene H. Dortch, Secretary  
Federal Communications Commission

Attn: Chief Administrative Law Judge  
Richard L. Sippel

**ENFORCEMENT BUREAU'S RESPONSE TO  
REQUEST FOR PERMISSION TO APPEAL DISCOVERY RULINGS**

1. The Chief, Enforcement Bureau, by her attorneys and pursuant to the Presiding Judge's request in *William F. Crowell*, Order, FCC 09M-06 (rel. Jan. 15, 2009), and Section 1.301(b) of the Commission's Rules, 47 C.F.R. § 1.301(b), hereby responds to the Request for Permission to File Appeal from the Former Presiding Officer's Interlocutory Rulings on Discovery ("Request for Appeal"), filed by William F. Crowell ("Crowell") on January 14, 2009. For the reasons below, the Request for Appeal should be summarily dismissed as procedurally defective, and Crowell should be directed to forthwith respond fully and completely to the three underlying discovery orders for which he sought permission to appeal.

2. In late December 2008, the then-presiding judge in this case released three orders thoroughly considering and resolving multiple discovery-related motions.<sup>1</sup> Thereafter, Crowell filed his instant Request for Appeal in which he seeks permission to appeal all of the discovery orders.

<sup>1</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); and *William F. Crowell*, Memorandum Opinion and Order, 08M-60 (rel. Dec. 31, 2008).

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3. Section 1.301(b) of the Commission's rules requires that appeals from interlocutory orders that are not appealable as a matter of right, may be filed only if allowed by the presiding officer. Section 1.301(b) further states that a request for permission to interpose such an appeal must be filed, if at all, within five days after the interlocutory order is released.

4. In the instant case, the subject discovery orders are indeed interlocutory orders which, pursuant to Section 301(b), are appealable only by permission of the Presiding Judge. As noted above, one of the discovery orders for which Crowell seeks permission to file an appeal was released on December 30, 2008, and two were released on December 31, 2008. Because Section 301(b) of the Commission Rules requires that requests for permission to file an appeal of an interlocutory order must be filed within five days after the interlocutory order is released, and the subject interlocutory orders were released on December 30 and 31, 2008, the deadlines for Crowell to file his request for permission to file appeals of the interlocutory orders would have been January 7, 2008 with respect to the first of the discovery orders, and January 8, 2008, with respect to the latter two discovery orders.<sup>2</sup> Crowell, however, did not file his Request for Appeal of any of the discovery orders until January 14, 2009, well after the deadline. Indeed, the date stamp on the face of the Request for Appeal leaves no doubt that that the pleading was received in the Commission Mail Room and by the Office of the Secretary beyond the deadline specified in Section 1.301(b) of the Commission's Rules.<sup>3</sup>

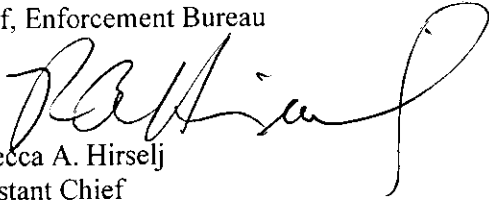
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<sup>2</sup> Because the required filing period is less than 7 days, intermediate holidays are not counted in determining the filing period. See 47 C.F.R. § 1.4(g). See also *William F. Crowell*, Transcript of Record at 18-20, *William F. Crowell*, WT Docket No. 08-20, (April 2, 2008) (pre-trial instructions regarding how to draft, address and file pleadings); *William F. Crowell*, Order, FCC 08M-22 (2008) (requesting that pleadings be directed to Marlene H. Dortch, Secretary, Federal Communications Commission, and to the attention of the Presiding Judge); <http://www.fcc.gov/osec/guidelines.html> (Guidelines for filing paper documents with the Office of the Secretary).


<sup>3</sup> A copy of the first page of Crowell's pleading showing the date stamp from the FCC Mail Room, used by the Office of the Secretary as the filing date, is attached hereto. It is of no consequence that Crowell may have e-mailed copies of his pleading to the Bureau and the Presiding Judge on January 5, 2009, as represented in the Certificate of Service accompanying his Request for Appeal. Such transmission of courtesy copies does not constitute a "filing" with the Office of the Secretary. See 47 C.F.R. §§ 1.7. See also *William F. Crowell*, Order, FCC 08M-08 (2008)

5. In light of the forgoing, it is plain that Crowell's Request for Appeal is procedurally defective. Accordingly, the Bureau moves for its dismissal. In addition, the Bureau respectfully requests the Presiding Judge to direct Crowell to forthwith respond fully and completely to the three underlying discovery orders for which he seeks permission to appeal.

Respectfully submitted,  
Kris Anne Monteith  
Chief, Enforcement Bureau



Rebecca A. Hirselj  
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January 21, 2009

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(noting that parties are expected to be fully cognizant of Part I of the Commission's Rules and Regulations concerning practice and procedure).

Received & Inspected

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

In the Matter of ) WT Docket No. 08-20  
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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 REQUEST FOR PERMISSION TO FILE APPEAL  
FROM THE FORMER PRESIDING OFFICER'S INTERLOCUTORY  
RULINGS ON DISCOVERY  
[47 C.F.R., Chapter I, Part I, Subpart B, §1.301(b)]**

Applicant-licensee WILLIAM F. CROWELL hereby moves the Presiding Officer herein, the Honorable Administrative Law Judge Richard L. Sippel, for an Order permitting Applicant to appeal to the Commission from certain interlocutory orders regarding discovery herein, which were made by the former Presiding Officer, the Honorable Administrative Law Judge

**CERTIFICATE OF SERVICE**

I, Rebecca Lockhart, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, hereby certify that on this 21st day of January 2009, a true and correct copy of the foregoing document, Enforcement Bureau's Response To Request For Permission To Appeal Discovery Rulings, was served via email and first-class mail, postage prepaid, upon

William F. Crowell  
1110 Pleasant Valley Road  
Diamond Springs, CA 95619-9221

and via email and hand delivery to

Administrative Law Judge Richard L. Sippel  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Suite 1-C768  
Washington, D.C. 20054

Rebecca Lockhart  
Rebecca Lockhart