

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

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

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 19, 2020**

**Released: February 20, 2020**

By the Commission:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we dismiss in part and deny in part the Appeal from ALJ’s Final Ruling and Application for Review [47 CFR §§ 1.302 and 1.115] (Appeal), filed August 27, 2018, by William F. Crowell (Crowell).<sup>1</sup> Crowell seeks review of an order by Chief Administrative Law Judge Richard L. Sippel (the Judge), which dismissed Crowell’s application to renew his amateur radio license.<sup>2</sup> We agree with the Judge that Crowell failed to prosecute his application by refusing to attend a hearing scheduled by the Judge in connection with Crowell’s renewal application, and that this failure warranted dismissal of Crowell’s renewal application.

**II. BACKGROUND**

2. *History of the case.* On February 12, 2008, the Wireless Telecommunications Bureau, under delegated authority, designated Crowell’s renewal application for hearing based on allegations that Crowell had violated the Communications Act and the Commission’s rules by: (1) intentionally interfering with and/or otherwise interrupting radio communications; (2) transmitting one-way communications on amateur frequencies; (3) transmitting indecent language on amateur frequencies; and (4) transmitting music on amateur frequencies.<sup>3</sup> The Hearing Designation Order (*HDO*) provided that the hearing would be held before an FCC Administrative Law Judge “at a time and place to be specified in a subsequent Order.”<sup>4</sup> The Chief Administrative Law Judge then specified that all hearings in the matter would take place “in the Offices of the Commission, Washington, D.C.”<sup>5</sup> Crowell thereupon filed a

---

<sup>1</sup> See also Enforcement Bureau’s Opposition to Crowell’s Appeal from ALJ’s Final Ruling and Application for Review, filed September 5, 2018 (Opposition); Reply to Enforcement Bureau’s Opposition to My Application for Review by the Commission [47 CFR §§1.302(g)], filed September 17, 2018 (Reply). The record also contains filings by non-parties, Michael LeBond, Ronald Ott and John R. Prukop, as well as Crowell’s responses to these filings. Because these submissions are not authorized and were not served on the Enforcement Bureau, we will not consider them and need not consider Crowell’s responses to them.

<sup>2</sup> *Order*, FCC 18M-05 (July 9, 2018) (*Dismissal Order*).

<sup>3</sup> *William F. Crowell*, Hearing Designation Order, 23 FCC Rcd 1865 (WTB 2008) (*HDO*); see 47 U.S.C. § 333; 47 CFR §§ 97.101(d), 97.113(a)(4), (b).

<sup>4</sup> *HDO*, 23 FCC Rcd at 1867, para. 10.

<sup>5</sup> *Order*, FCC 08M-08 (February 15, 2008). See also 47 CFR § 0.351(a) (granting the Chief Administrative Law Judge authority to specify the time and place of hearings where not otherwise specified by the Commission).

notice of appearance in which he certified that “I will indeed appear on the date fixed for hearing herein, and that I will present evidence on the issues specified in the Hearing Designation Order.”<sup>6</sup>

3. This litigation then proceeded through the prehearing phase, including discovery, but was interrupted by a hiatus of several years, during which Crowell’s petition to disqualify the Judge was pending.<sup>7</sup> Shortly after litigation resumed, Crowell, on March 30, 2017, filed a motion asking that the hearing location be moved to the Sacramento, California area. He explained: “I have not the means to travel to Washington, D.C. for any hearing herein. However, I do wish to defend my rights to hold a license in the amateur service. If I am required to travel to Washington, D.C. for hearings herein I will be unable to appear and will be unable to obtain due process of law herein.”<sup>8</sup> The Judge denied Crowell’s motion on April 7, 2017, finding (1) that Crowell had offered no evidence to support his claim of financial hardship and (2) that the public interest favored holding a hearing in Washington, D.C.<sup>9</sup> Crowell filed exceptions to this denial, which were held in abeyance pending resolution of Crowell’s appeal of the Judge’s denial of his earlier motion to disqualify the Judge.<sup>10</sup> In subsequent correspondence and filings, Crowell confirmed that he refused to attend a hearing held in Washington, D.C.<sup>11</sup>

4. *Dismissal Order.* In the *Dismissal Order*, the Judge responded to Crowell’s refusal to attend a hearing in Washington, D.C. by granting the Enforcement Bureau’s motion to dismiss Crowell’s application. In so doing, the Judge first held that Crowell’s refusal to attend any hearing scheduled for Washington, D.C. constituted a failure to prosecute and thereby effectively violated section 1.221(c) of the rules, which requires dismissal if an applicant fails to commit to appear on the date fixed for hearing.<sup>12</sup> The Judge then stated that although Crowell’s arguments against dismissal were tantamount to rearguing his motion for a field hearing, he would nonetheless address those arguments in the context of a dispositive order.<sup>13</sup> The Judge found that determining the appropriate location for a hearing turns on consideration of the public interest, and that Crowell’s conclusory assertions of financial hardship did not justify spending public funds and burdening Commission resources to hold a field hearing.<sup>14</sup> The Judge noted that the only provision of the Commission’s administrative hearing rules addressing financial hardship, section 1.224,<sup>15</sup> applies only to licensees in danger of losing a license on which their livelihood

---

<sup>6</sup> Applicant’s Written Appearance, filed February 25, 2008, by Crowell.

<sup>7</sup> The docket shows no entries between filings on November 19, 2010, and three orders by the Judge on March 28, 2017.

<sup>8</sup> Licensee’s Motion for Field Hearing, filed March 30, 2017, by Crowell at 2.

<sup>9</sup> *Order*, FCC 17M-19 (April 7, 2017).

<sup>10</sup> Crowell, on April 3, 2017, had filed an appeal of the Judge’s March 28, 2017 order declining to recuse himself. *See Order*, FCC 17M-18 (April 7, 2017). Under 47 CFR § 1.245(b)(4), the hearing is suspended pending a Commission ruling on the appeal. The Commission ultimately denied the appeal. *William F. Crowell*, Memorandum Opinion and Order, 33 FCC Rcd 4367 (2018).

<sup>11</sup> Applicant Status Report, filed June 6, 2018, by Crowell. The Enforcement Bureau lists additional representations to similar effect. Opposition at 3-4.

<sup>12</sup> *Dismissal Order* at 3-4, paras. 8-10. *See* 47 CFR § 1.221(c), which provides: “In order to avail himself of the opportunity to be heard, the applicant, in person or by his attorney, shall. . . file with the Commission, in triplicate, a written appearance stating that he will appear [on] the date fixed for hearing and present evidence on the issues specified in the order. Where an applicant fails to file such a written appearance. . . the application will be dismissed with prejudice for failure to prosecute.” Crowell initially filed such a notice on February 25, 2008.

<sup>13</sup> *Dismissal Order* at 4, paras. 12-13.

<sup>14</sup> *Id.* at 4-5, paras. 14-15.

<sup>15</sup> 47 CFR § 1.224 (“Motion to proceed in forma pauperis”).

depends, which Crowell admitted was not his case.<sup>16</sup> The Judge rejected Crowell's argument that, independent of section 1.224, the holder of a "non-remunerative" license should not be required to spend money traveling to defend it. In any event, the Judge observed that, even if the rule applied, Crowell had failed to make a detailed showing of financial hardship, as the rule requires.<sup>17</sup>

5. *Crowell's Appeal.* Crowell's appeal raises 16 numbered issues covering a range of topics, including a challenge to the Judge's finding that Crowell was not entitled to a local field hearing.<sup>18</sup> Crowell also argues that attempting to enforce the amateur rules against him in this proceeding violates the First Amendment to the U.S. Constitution by restricting his right to free speech.<sup>19</sup> Likewise, Crowell challenges a number of alleged discovery and other prehearing actions by the Judge and EB that he asserts prejudiced him.<sup>20</sup>

6. *Enforcement Bureau's Opposition.* The Enforcement Bureau responds that the Judge correctly found that Commission policy does not entitle Crowell to a field hearing and that the Judge correctly dismissed Crowell's renewal application based on Crowell's refusal to appear at any hearing in Washington, D.C.<sup>21</sup> The Bureau adds that Crowell did not object to the location of the hearing at the time it was specified in 2008, but instead filed a notice of appearance in which he did not address the designated location.<sup>22</sup> The Enforcement Bureau urges the Commission to disregard the issues that are not related to the *Dismissal Order* and contends that, in any case, Crowell fails to specify either the action under delegated authority these arguments address or the factors that warrant Commission consideration of the issues.<sup>23</sup>

7. *Crowell's Reply.* Crowell denies that his original 2008 notice of appearance indicated his agreement to appear in Washington, D.C. He reiterates his argument that section 1.221(c) of the rules requires only that an applicant agree to appear on the date of the hearing but not at the place of the hearing.<sup>24</sup> Crowell also contends that he should not be faulted for waiting until now to appeal the original specification of the hearing location.<sup>25</sup>

### III. DISCUSSION

8. We find that the Judge correctly dismissed Crowell's renewal application based on Crowell's refusal to appear at a hearing and that Crowell has not established a right to a field hearing. We

---

<sup>16</sup> Indeed, it is unlikely that section 1.224 could ever apply to an amateur licensee, given that amateur stations cannot be used for any communications for hire or material compensation or, with limited exceptions, for communications in which the licensee has a pecuniary interest. 47 CFR § 97.113(a)(2), (3).

<sup>17</sup> *Dismissal Order* at 5, paras. 16-18, n.29.

<sup>18</sup> Appeal at 6-10.

<sup>19</sup> Crowell asserts, for example, that this proceeding resulted from persecution by a former Enforcement Bureau official. He also asserts that the Commission generally lacks authority to regulate speech in the amateur radio service, especially by classifying it as "interference" or "indecentcy." *Id.* at 10-22.

<sup>20</sup> Crowell does not include record citations that would clarify these issues. They include allegations that he has been subjected to unfair pressure and threats by the Judge and the Enforcement Bureau, that there has been undue delay in this case, and that he has been prejudiced by the Judge's procedural rulings. *Id.* at 19-24.

<sup>21</sup> Opposition at 6-10.

<sup>22</sup> *Id.* at 6-7, 10.

<sup>23</sup> *Id.* at 10-12; see 47 CFR § 1.115(b)(2).

<sup>24</sup> Reply at 1-2.

<sup>25</sup> *Id.* at 2-3.

also agree with the Enforcement Bureau that many of the arguments raised by Crowell on appeal are not properly before us in reviewing the *Dismissal Order* and should be disregarded.

9. *Dismissal and Right to a Field Hearing.* We find that the Judge properly exercised his discretion not to transfer the hearing to California and agree that Crowell's renewal application should be dismissed because of his refusal to attend a hearing in Washington, D.C.<sup>26</sup> As an initial matter, Crowell incorrectly argues that the Judge gave "no consideration whatsoever" to his convenience and necessity.<sup>27</sup> To the contrary, the Judge weighed Crowell's assertion that he is unable to travel against the reasons to hold the hearing in Washington, D.C. and found that the public interest favored a Washington hearing.<sup>28</sup> We affirm the Judge's reasoning in all respects.

10. First, as a matter of law, the Judge properly held that Crowell's refusal to appear at the place designated for hearing constituted a failure to prosecute that supported dismissal under section 1.221(c) in that it effectively withdrew his notice of appearance and thereby nullified it. Dismissal is consistent with the Commission's decision in the *Edward B. Christopher Order*,<sup>29</sup> in which the Commission dismissed an application for an amateur radio license after the applicant failed to appear in Washington, D.C. for hearing, claiming financial hardship and physical disability. The Commission held that the applicant's refusal triggered the provision of section 1.221(c) calling for dismissal of an application for failure to prosecute where an applicant does not indicate an intention to "appear [on] the date fixed for hearing and present evidence."<sup>30</sup> Consistent with our reasoning in that *Order*, we reject Crowell's reading of section 1.221 as indicating that the applicant need only agree to appear on the date fixed for hearing but not at the place designated.<sup>31</sup> Crowell's argument ignores that the notice of appearance required under section 1.221(c) responds to a hearing order issued under section 1.221(a), which specifies, among other things, the "time, *place*, and nature" of a hearing.<sup>32</sup> Similarly, Crowell ignores that the requirement to "appear" and "present evidence" at a hearing inherently requires physical attendance at the place of hearing (or leave to participate remotely).<sup>33</sup>

11. Other than his reading of section 1.221(c), the only basis that Crowell offers for overturning the Judge's ruling is his contention that, under various legal theories, Crowell is entitled to a field hearing in California. We agree with the Judge and the Enforcement Bureau, however, that neither Commission policy nor any other principle of law entitles Crowell to a field hearing. The Commission's rules do not specify whether hearings will be held in Washington, D.C. or in the field; they provide for the

---

<sup>26</sup> Strictly speaking, the dispositive issue in the *Dismissal Order* is whether Crowell's refusal to appear in Washington, D.C., supports dismissal of his application for failure to prosecute, and the Judge's denial of his request for a field hearing is an interlocutory order that is not appealable as of right. See 47 CFR § 1.301(a). Nonetheless, we address both decisions here because (1) the Judge discussed both in the *Dismissal Order*, (2) the Enforcement Bureau does not object, (3) the decision on venue is a predicate for the Judge's dismissal, and (4) Crowell filed timely exceptions to the denial which would not otherwise be heard.

<sup>27</sup> Appeal at 6.

<sup>28</sup> *Dismissal Order* at 5, para. 15.

<sup>29</sup> Order, 25 F.C.C.2d 699, 699-700 (1970).

<sup>30</sup> *Id.*

<sup>31</sup> Appeal at 7-8.

<sup>32</sup> 47 CFR § 1.221(a)(3) (emphasis added).

<sup>33</sup> Crowell attempts to distinguish the language of section 1.221(c) from that of section 1.221(e), which requires non-applicant parties to appear "at the hearing." We reject this distinction because the difference in wording reflects no more than that non-applicant parties (unlike applicants) do not have to commit to presenting evidence, but only to appear at the hearing. In addition, Crowell offers no support, and the text of the *Dismissal Order* provides none, for his contention that the Judge actually relied on section 1.221(e).

possibility of either location.<sup>34</sup> The Commission has held, however, that applicants are not entitled to a local hearing and that the location of the hearing does not automatically follow from the type of proceeding involved. Rather, the determination of hearing location depends on a consideration of the public interest with an emphasis on the need to conduct a fair and impartial hearing and compile a full, fair, and accurate record.<sup>35</sup> In making this determination, the Commission has broad discretion under Section 4(j) of the Communications Act to “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”<sup>36</sup> As the U.S. Supreme Court has long recognized, the Act is designed to ensure that the Commission is “free to fashion [its] own rules of procedure and to pursue methods of inquiry capable of permitting [it] to discharge [its] multitudinous duties.”<sup>37</sup>

12. On the facts of this case, we find that the Judge properly weighed the public interest considerations relevant to exercising his discretion in determining that the hearing should not be transferred to California.<sup>38</sup> The Judge properly found that Crowell offered no more than unsupported claims that he could not afford to travel to Washington, D.C.<sup>39</sup> Crowell submitted no documentation of his finances, nor did he advance any other reason why a fair hearing could not be held in Washington, D.C.—for example, that he relied on the availability of witnesses in California.<sup>40</sup> Against Crowell’s general assertions, the Judge properly weighed the costs to the Commission of moving the hearing and reasonably determined that they outweighed any countervailing burdens on Crowell. As the Enforcement Bureau noted, “Enforcement Bureau (Bureau) counsel assigned to this case, the Presiding Judge, and all of the Office of Administrative Law Judge staff are all located in Washington, D.C. In addition, all of the Bureau’s evidence to date is located in the Commission’s headquarters in Washington, D.C.”<sup>41</sup> Transporting the Commission’s sole administrative law judge, his staff, and Enforcement Bureau trial staff to California would have required a considerable expense.<sup>42</sup> That this expense would be borne by the Federal Government and that a move would tend to disrupt the conduct of other public business in

---

<sup>34</sup> See 47 CFR § 1.253(c), (d).

<sup>35</sup> See *United Broadcasting Co.*, Decision, 93 F.C.C.2d 482, 487-88 (1983); *Cathryn C. Murphy*, Memorandum Opinion and Order, 23 F.C.C.2d 204, 205 (1970).

<sup>36</sup> 47 U.S.C. § 154(j).

<sup>37</sup> *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 140-44 (1940); accord, *FCC v. Schreiber*, 381 U.S. 279 (1965).

<sup>38</sup> Although not necessary to his decision, the Judge also found that Crowell had not objected earlier when venue was set for Washington, D.C. Crowell claims that he earlier informed the Enforcement Bureau of his objection to a Washington, D.C. hearing and that he deliberately worded his appearance so as not to commit to a location. Appeal at 8. Regardless, the fact remains that he did not at that time register any objection with the Judge. We also note that a status report filed by Crowell contradicts his claim that he never agreed to appear in Washington, D.C. It states: “4. Proposed trial dates at the Federal Communications Commission in Washington, D.C.: If it indeed eventually proves necessary to hold a hearing herein, Applicant wishes to propose hearing dates in Spring of 2012.” Applicant’s Status Report, filed November 19, 2010, by Crowell.

<sup>39</sup> Indeed, Crowell’s emphasis on the non-remunerative character of the amateur radio service (Appeal at 6) suggests that this is more a matter of convenience than hardship.

<sup>40</sup> Crowell belatedly asserts in his appeal that he cannot afford to bring his own witnesses to Washington, D.C. Appeal at 9. He does not, however, explain what witnesses, if any, are important to his case.

<sup>41</sup> Enforcement Bureau’s Opposition to Crowell’s Motion for a Field Hearing, filed April 3, 2017 at 2.

<sup>42</sup> Crowell himself observes that the cost of hearings is a significant factor in the Enforcement Bureau’s ability to enforce the Commission’s amateur rules. He states: “amateur licensees have little or no financial incentive to follow the Commission’s Rules. Such licensees may therefore be inclined to violate the rules, so it would probably be very expensive to administer the amateur service legally and constitutionally due to the large number of cases that would

(continued....)

Washington, D.C. constitute reason enough to hold the hearing at Commission headquarters, at least in the absence of specific countervailing reasons to hold the hearing elsewhere.<sup>43</sup>

13. We reject Crowell’s various assertions that he is entitled to a field hearing as a matter either of Commission policy or of general law. Crowell cites what he terms the “five leading amateur service cases on the subject of venue,” which he claims show that the Commission has an established practice of conducting field hearings in amateur license renewal proceedings.<sup>44</sup> All these cases demonstrate, however, is that in five specific instances over 30 years ago the Commission chose to conduct field hearings. The decisions do not discuss why a field venue was chosen or whether this was common practice at the time. Thus, Crowell has no support for his speculation that “the former Private Radio Bureau realized that because the amateur radio service is non-remunerative in nature it was required to hold field hearings in amateur cases in the city nearest to the licensee’s residence.”<sup>45</sup> Similarly, Crowell has no basis for his conjecture that, in two more recent cases, the applicants chose not to contest venue in Washington, D.C., because they were represented by Washington attorneys.<sup>46</sup> In any event, even if there were at one time a practice of regularly holding field hearings in amateur renewal cases, such practice does not obviate the Judge’s obligation to weigh the public interest considerations on the facts of each case.

14. Likewise, we are not persuaded by Crowell’s contentions that legal principles outside of the Communications Act constrain our determination. Crowell’s main complaint is that the Judge did not give sufficient attention to section 554(b)(3) of the APA, which requires “due regard for the convenience and necessity of the parties or their representatives.”<sup>47</sup> But providing “due regard” does not mean that the convenience and necessity of parties is determinative in fixing a hearing location; the APA does not guarantee a party the right to a convenient forum as long as the choice of venue does not impair its ability to present its case.<sup>48</sup> For example, in determining the appropriate venue, the convenience of and burden on the government are also factors.<sup>49</sup>

(Continued from previous page) \_\_\_\_\_  
inevitably arise.” Reply at 4, n. 9.

<sup>43</sup> See *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (the public interest includes preventing wasteful and repetitive proceedings at the taxpayers’ expense).

<sup>44</sup> Appeal at 7, citing *Gary W. Kerr*, Initial Decision, 91 F.C.C.2d 110 (ALJ 1982); *David Hildebrand*, Memorandum Opinion and Order, 2 FCC Rcd 2708 (1987); *Henry C. Armstrong, III*, Initial Decision, 92 F.C.C.2d 491 (ALJ 1982); *Randy L. Ballinger*, Initial Decision, FCC 84D-28 (ALJ 1984); *Donald E. Gilbeau*, Decision, 91 F.C.C.2d 98 (RB 1982); see also Appeal at 9 (“The Commission had maintained an established policy of holding field hearings in amateur licensing cases in the city nearest the licensee’s residence”). We note that the Judge cited two cases that referred to a “pattern” or “customary practice” of conducting field hearings in broadcast renewal proceedings, albeit a practice that may yield to public interest considerations in any particular case. See *United Broadcasting Co.*, 93 F.C.C.2d at 488; *Cathryn C. Murphy*, 23 F.C.C.2d at 205. Crowell does not rely on these decisions, which in any event do not support his argument.

<sup>45</sup> Appeal at 7.

<sup>46</sup> *Id.*, citing *Kevin David Mitnick*, Initial Decision, FCC 02D-02 (ALJ 2002); *David Titus*, Decision, 29 FCC Rcd 14066 (2014).

<sup>47</sup> 5 U.S.C. § 554(b)(3); see Appeal at 6.

<sup>48</sup> See *McCormick v. Edwards*, Dkt No. Civil 82-32 S (M.D. Ala. 1982), reported at 1982 WL 1146 at \*2 (section 554(b) does not constitute a requirement for a hearing site convenient to the place of business of party seeking review of a Federal Energy Regulatory Commission order where the party was not prejudiced by the location of the hearing).

<sup>49</sup> See *Baires v. INS*, 856 F.2d 89, 92-93 (9th Cir. 1988) (the convenience of the immigration court is a factor to be weighed when considering a request for a continuance or change of venue in a deportation case); *Maremont Corp. v.*

(continued....)

15. Crowell's subsidiary arguments in support of the proposition that the defendant's convenience is necessarily the decisive factor are also unpersuasive. Crowell relies on two cases, *World-Wide Volkswagen Corp. v. Woodson*<sup>50</sup> and *Olberding v. Illinois Central Railroad Co.*,<sup>51</sup> for the proposition that venue rules are intended to protect defendants from being forced to litigate in inconvenient forums.<sup>52</sup> As a threshold matter, application of venue rules to how the Commission conducts its proceedings misperceives the fundamental differences between agency and court proceedings, as set forth by the Supreme Court in *Pottsville Broadcasting*, and the broad discretion afforded the Commission under Section 4(j) of the Act.<sup>53</sup> Moreover, neither case supports such a one-sided proposition in favor of the defendant. For example, Crowell truncates and misquotes a key dictum in the *World-Wide Volkswagen* case. Crowell sets out the quote as: "The burden on the defendant . . . is always a primary concern in such cases."<sup>54</sup> The actual quotation, however, reads: ". . . the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute. . . the plaintiff's interest in obtaining convenient and effective relief . . . [and] the interstate judicial system's interest in obtaining the most efficient resolution of controversies. . . ."<sup>55</sup> Likewise, the statute at issue in *Olberding* required venue in the state where *either* all of the plaintiffs *or* all of the defendants reside, and the Court held only that the plaintiff could not sue in a third state.<sup>56</sup> Both cases thus recognize that decisions regarding forum or the location of proceedings are informed by considerations of fairness and efficiency for all parties and the general public interest.

16. Finally, we reject Crowell's argument that the Judge improperly relied on section 1.224, the rule dealing with motions to proceed in forma pauperis.<sup>57</sup> To the contrary, the Judge found that this rule did not apply to Crowell's application (since Crowell is not an applicant whose livelihood depends on his radio license as the rule requires).<sup>58</sup> He simply noted, by way of analogy, that Crowell had not made the showing that section 1.224 would require if it were applicable, which is a reasonable approach to addressing whether an adequate showing has been made to support a claim of hardship. Crowell offers no support for his assertion that a licensee in a non-remunerative service should be held to a lower standard than one whose livelihood is at stake.<sup>59</sup>

(Continued from previous page) \_\_\_\_\_  
*FTC*, 431 F.2d 124, 129 (7th Cir. 1970) (upholding hearing examiner's decision to hold hearing in Washington, D.C. because it is a convenient location for government witnesses).

<sup>50</sup> 444 U.S. 286 (1980).

<sup>51</sup> 346 U.S. 338 (1953).

<sup>52</sup> Appeal at 9 (arguing that "[v]enue statutes are *supposed* to function as a *shield* against the plaintiff's attempt to 'forum shop'" (emphasis in original), but that here the Judge used venue to thwart his defense and to punish his exercise of free speech).

<sup>53</sup> See 309 U.S. at 140-44.

<sup>54</sup> Appeal at 9,

<sup>55</sup> 444 U.S. at 292. In any event, *World-Wide Volkswagen* involved the issue of whether a state had personal jurisdiction over a nonresident defendant, not whether it was the appropriate venue.

<sup>56</sup> See also *Apache Trading Corp. v. Toub*, 816 F.2d 605, 611 (11th Cir. 1987) (upholding Commodity Futures Trading Commission order requiring Florida corporation to attend hearings in Atlanta, Georgia, the residence of an allegedly defrauded investor).

<sup>57</sup> Appeal at 6-7, 11.

<sup>58</sup> *Dismissal Order* at 5, paras. 16-18. Even if Crowell were the type of applicant to which the rule applied, his status would not preempt the public interest balancing applicable to choice of venue.

<sup>59</sup> Appeal at 7.

17. Having found that Crowell has failed to demonstrate financial hardship, we need not address Crowell's argument that due process requires hearing arrangements to accommodate indigency.<sup>60</sup> We also reject Crowell's implication that the venue decision was improperly motivated by an intention to deny him the opportunity to defend his constitutional rights.<sup>61</sup> The Judge's decision was properly supported by legitimate considerations, and Crowell has advanced no evidence that either the Judge or the Enforcement Bureau intended to foreclose Crowell's ability to assert his rights. It has long been established that "agency opinions . . . speak for themselves."<sup>62</sup> Where, as here, the Judge's order set forth legitimate bases for his decision, there is no reason "to probe the mental processes of the [agency decisionmaker]."<sup>63</sup>

18. *Other Issues.* Given our dismissal of his appeal due to failure to prosecute, we do not reach the other issues that Crowell raises. These arguments are not germane to the *Dismissal Order*, but consist of First Amendment objections to the proceeding as a whole and various interlocutory objections regarding the Judge's earlier actions and decisions.<sup>64</sup> If Crowell had pursued his case to its conclusion and the Judge had ruled against him on the merits, he could have raised these arguments before the Commission together with his exceptions to the Judge's initial decision.<sup>65</sup> By declining to appear, however, he opened his case to procedural dismissal. He thereby forfeited his right to make his arguments before the Commission.

19. Crowell suggests that the Judge's termination of this proceeding by dismissal should be treated as equivalent to an initial decision, so that interlocutory matters may be appealed in conjunction with Crowell's appeal of the *Dismissal Order*, as they would be in conjunction with exceptions to an initial decision. Specifically, Crowell argues that since the *Dismissal Order* terminated proceedings before the Judge, we should treat it as an initial decision for purposes of section 1.115(e).<sup>66</sup> Such a reading, however, would both contradict the language of the rule and undermine the orderly conduct of Commission proceedings. Section 1.115(e) uses the specific terms "exceptions" and "initial decision," which refer throughout the Commission's rules to the administrative law judge's final resolution of the merits and a party's appeal of that resolution.<sup>67</sup> Crowell points to no indication that these terms should be

---

<sup>60</sup> Appeal at 9, citing *Griffin v. Illinois*, 351 U.S. 12 (1956) (inability to purchase a hearing transcript for purposes of appeal); *Boddie v. Connecticut*, 401 U.S. 371 (1971) (inability to afford divorce action). We also reject Crowell's argument that it would violate his due process to stigmatize him by denying his license without a hearing. Appeal at 9. Crowell relies on a case in which a party, unlike Crowell, had no right to a hearing before government action was taken. *Vitek v. Jones*, 445 U.S. 480 (1980) (holding that a prison inmate had a right to a hearing before being transferred from a prison to a mental hospital). Crowell cites an additional case, *Goldberg v. Kelly* 397 U.S. 254, 268-69 (1970), which holds merely that a party is entitled to the degree of procedural due process appropriate under the circumstances.

<sup>61</sup> Appeal at 10, 11-12, 13, 14.

<sup>62</sup> *PLMRS Narrowband Corp. v. FCC*, 182 F.3d 995, 1001 (D.C. Cir. 1999).

<sup>63</sup> *Morgan v. United States*, 304 U.S. 1, 18 (1938).

<sup>64</sup> See *supra* notes 19, 20.

<sup>65</sup> See 47 CFR §§ 1.115(e)(1), (e)(2), and (e)(3) (permitting review of interlocutory rulings upon the filing of "exceptions" or "exceptions to the initial decision"). The Judge's decisions at issue here do not fall within the limited class of interlocutory rulings that may be immediately appealed as of right. See 47 CFR § 1.301(a).

<sup>66</sup> "Although [the rules regarding deferral of review] seem to apply to cases in which (unlike this case) a hearing has been held, insofar as *interlocutory* rulings are concerned there is no real difference between the two kinds of cases, and thus no persuasive reason exists why the same rationale for the licensee's preservation of exceptions on appeal should not apply to a case dismissed without a hearing under Rule 1.221(c)." Reply at 2.

<sup>67</sup> See 47 CFR §§ 1.267 (Initial and recommended decisions), 1.277 (Exceptions; oral arguments). Compare 47 CFR § 1.302 (providing for "appeal" of a "final ruling" other than an initial decision).

construed any differently here. Furthermore, if we were to consider Crowell's interlocutory arguments, we would effectively allow him to evade the rule limiting interlocutory appeals through the simple expedient of failing to prosecute his case. Rewarding the failure to prosecute in this manner would significantly dilute the force of our rules governing both interlocutory appeals and appearance at hearings.<sup>68</sup> Furthermore, Crowell could have avoided this result, once the Judge had denied his request for a hearing in California, by appearing in Washington, D.C. We therefore decline to adopt the interpretation that Crowell proposes.

#### IV. ORDERING CLAUSE

20. Accordingly, IT IS ORDERED, pursuant to 47 U.S.C. § 154(i) and (j) that the Appeal from ALJ's Final Ruling and Application for Review [47 CFR §§1.302 and 1.115] (Appeal), filed August 27, 2018, by William F. Crowell IS DISMISSED in part and DENIED in part.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>68</sup> See *AdvantEdge Business Group v. Thomas E. Mestmaker & Associates, Inc.*, 552 F.3d 1233, 1237-38 (10th Cir. 2009) (citing the "unremarkable principle" that a litigant should not be allowed to accomplish review of an otherwise unappealable interlocutory order by failing to prosecute its remaining claims); *Shannon v. General Electric Co.*, 186 F.3d 186, 192 (2d Cir. 1999) (allowing appeal might reward dilatory and bad faith tactics).