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

In re Applications of	)	
	)	
HERBERT L. SCHOENBOHM	)	WT Docket No. 95-11
Kingshill, Virgin Islands	)	
	)	
	)	
For Amateur Station and	)	
Operator Licenses	)	

Appearances

Lauren A. Colby on behalf of Herbert L. Schoenbohm; and Thomas D. Fitz-Gibbon and Terrence E. Reidler on behalf of the Wireless Telecommunications Bureau.

DECISION

Adopted: June 29, 1998 ; Released: July 8, 1998

By the Commission:

1. In this opinion, we affirm the Supplemental Initial Decision (S.I.D.), 13 FCC Rcd 1853 (ALJ 1997), of an Administrative Law Judge (ALJ) to deny the application of Herbert L. Schoenbohm to renew his amateur licenses. The ALJ found that Schoenbohm engaged in misrepresentation and lacked candor in his testimony regarding his felony telephone toll fraud conviction and a designated issue regarding solicitation of ex parte presentations. We find that this behavior, in combination with the fraud conviction itself, justifies non-renewal of Schoenbohm's licenses.

I. BACKGROUND

2. Schoenbohm was convicted for fraudulently using a counterfeit access device to obtain long distance telephone service in violation of federal law, 18 U.S.C. § 1029(a)(1). By Amended Hearing Designation Order, 10 FCC Rcd 1669 (WTB 1995), the Wireless Telecommunications Bureau ordered a hearing to determine whether, in light of his felony conviction involving telephone toll fraud, Schoenbohm was qualified to renew his amateur service licenses. The ALJ subsequently added a second issue to determine whether Schoenbohm violated 47 C.F.R. § 1.1210 by soliciting or encouraging others to make ex parte presentations on his behalf. In an Initial Decision, Herbert L. Schoenbohm, 11 FCC Rcd 1146 (1996), the ALJ resolved both issues against the applicant and concluded that his licenses should not be renewed. In so holding, the ALJ found that Schoenbohm's testimony about his conviction "was

rulemaking, asking that a new channel be allotted to Victoria, so that applications to construct might be filed at some future date. Regardless of the outcome of Hooten's modification request, there would be no guarantee that the Commission would ultimately grant the allotment request for Victoria. Nor, if such an allotment were granted, would there be any guarantee that Mazak would be the only applicant for that allotment, or that Mazak would be awarded the construction permit. See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997) (competing applications to construct commercial broadcast stations filed on or after July 1, 1997 to be resolved by auction). Accordingly, we do not agree with Mazak's arguments.

10. In sum we find no staff error, and find that the waiver in this case is not inconsistent with our holding in Ashtabula. The Ashtabula decision represents our continuing policy that the "one-in-three" requirement in 47 C.F.R. § 73.3555(b) is the standard generally applicable to modification requests filed in the latter half of a construction period, and one that will not be waived absent compelling circumstances. In the present case, Hooten has shown such circumstances, and therefore merits a waiver.

ORDERING CLAUSES

11. Accordingly, the Application for Review filed on September 10, 1997 by MAZAK Broadcasting Company with respect to station KZAM, Ganado, Texas IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

deliberately false" because, in his written and oral testimony as well as his proposed findings, Schoenbohm altered his initial written testimony in "a conscious effort to influence and mislead the trier of fact."

3. After Schoenbohm filed exceptions with the Commission, the proceeding was remanded for further hearing. Herbert L. Schoenbohm, 11 FCC Rcd 12537 (OGC 1996). The remand order stated that the issues originally designated for hearing had been "overshadowed" by the more basic question of whether the applicant was candid in his testimony in this case. In this regard, the remand order indicated that the record is incomplete, partly due to the fact that certain key questions regarding Schoenbohm's testimony were not raised by the Bureau until its proposed findings. In addition, the remand order found that there was also an evidentiary gap because another fundamental issue involving Schoenbohm's use of his amateur radio facilities was not designated for hearing or responded to on the record. Accordingly, the following additional issues were specified:

> To determine whether Herbert L. Schoenbohm made misrepresentations or lacked candor in his testimony about his felony conviction, loss of pension rights, and ex parte communications.
>
> To determine if Herbert L. Schoenbohm used his amateur radio facilities for communications about how to obtain illicit access codes.

4. In the S.I.D., under the misrepresentation/candor issue, the ALJ reiterated his earlier finding that Schoenbohm deliberately mischaracterized his conviction in order to mislead the ALJ, and concluded that Schoenbohm thereby misrepresented a material fact to the Commission and was lacking in candor. The ALJ also reiterated his earlier finding that Schoenbohm solicited others to make prohibited ex parte presentations and, by claiming in his testimony that he did not do so, again misrepresented and was lacking in candor. The S.I.D. concluded that Schoenbohm did not misrepresent his loss of pension rights, however. The ALJ also resolved the illicit access codes issue in Schoenbohm's favor. Schoenbohm excepts to the S.I.D.'s denial of license renewal and requests oral argument. The Bureau urges that the S.I.D. be affirmed in all respects.

II. DISCUSSION

5. As a preliminary matter, we deny Schoenbohm's request for oral argument. Oral argument would not materially assist our resolution of this proceeding, which is based upon evidence in the record.

A. Felony Conviction

6. Schoenbohm was convicted in the United States District Court for the District of the

Virgin Islands for violation of 18 U.S.C. § 1029)a)(1), which provides that anyone who "knowingly and with intent to defraud produces, uses or traffics in one or more counterfeit access devices" is subject to punishment. (Emphasis added.) The statute defines an "access device" as "any plate, card, code, account number, or other means of access that can be used . . . to obtain money, goods, services or any other thing of value . . . ." Schoenbohm was sentenced to house arrest for two months, given two years probation, and ordered to pay a fine of $5,000. S.I.D., ¶¶ 4-6; Bureau Exh. 1.[1]

7. The United States Court of Appeals for the Third Circuit affirmed Schoenbohm's conviction: "We . . . affirm appellant's conviction under 18 U.S.C. § 1029)a)(1) -- use of a counterfeit access device." (Emphasis added.) The court of appeals stated that the statute was violated if Schoenbohm made a single call using a counterfeit access device and that "overwhelming evidence" supported the conviction. According to the court's summary of the evidence:

> Fraud was a major problem for [the long distance service company] -- illicitly-obtained access codes were used to procure telephone service. To stem its losses, [the company] began an investigation which identified Herbert L. Schoenbohm as a possible user of illicitly-obtained access codes.
>
> * * *
>
> Two witnesses testified that Schoenbohm telephoned them at about the same time that records show calls being placed to their numbers with illicit codes. Five other witnesses to whom calls were placed with illicit codes testified that Schoenbohm was the only person in the Virgin Islands who ever telephoned them. Schoenbohm possessed an automatic dialing device that could be used to break into the [service company] telephone line.

Bureau Exh. 1; S.I.D., ¶¶ 7-8.

8. In his initial written testimony in this proceeding, dated May 23, 1995, Schoenbohm plainly stated: "I was convicted for defrauding a telephone resale service provider by . . . making unauthorized long distance calls." Schoenbohm Exh. 1. In a subsequent written statement, dated July 18, 1995, however, Schoenbohm characterized his conviction differently:

> I did not steal any money or cause the account of any telephone subscriber to be

[1]The jury originally convicted Schoenbohm of two other charges, namely, violating 18 U.S.C. § 1029(a)(2) by using or trafficking in unauthorized access devices to obtain long distance telephone service valued at more that $1,000, and violating 18 U.S.C. § 1029(a)(3) by possessing fifteen or more counterfeit or unauthorized access devices. Ultimately the district court granted acquittals under these two counts. Bureau Exh. 1.

> debited. I was convicted solely of having knowledge in my mind of certain telephone codes of which 4 of the 6 digits were similar to those that could be used to make long distance calls without paying for them. These telephone numbers were the "Counterfeit Access Device" which I was convicted of possessing or using.

Schoenbohm Exh. 7.

9. Furthermore, in his oral testimony at the first hearing, Schoenbohm described his conviction as being based on possession of numbers in his mind rather than the performance of an act:

> Q. Now, you have been convicted, have you not, of the crime of possessing a counterfeit telephone access device?
> A. That's correct.
> Q. And what was the device that you were convicted of possessing?
> A. It was never described fully in the court, but believed to be numbers in my mind.
> Q. In other words, numbers that could be used to make long-distance telephone calls?
> A. That's correct.
> Q. [W]ithout paying for them? Is that right?
> A. Correct.

Tr. 38.

10. At the remand hearing, Schoenbohm again testified that he "was convicted solely of having knowledge in my mind of certain telephone codes . . . ," although he also admitted that his conviction was based "on me making phone calls." Remand Tr. 44. He continued to maintain, however, that he was convicted "of having knowledge of certain numbers that could be used to make long distance calls without paying for them." Remand Tr. 56. Although this statement taken alone is accurate, it suggests that Schoenbohm did not use these numbers. In fact, he was convicted of using these access code numbers. In a written statement submitted on remand, Schoenbohm explained his earlier testimony in this way:

> In my testimony at the prior hearing in this proceeding, I responded to a question from my attorney which inquired, in substance, as to the nature of the counterfeit access devices, which were in my possession. My attorney asked that question because, prior to the hearing, I specifically asked him to make it clear that I did not possess or use any mechanical, electromechanical, or magnetic access devices: that the only devices I had were telephone numbers in my head.

Schoenbohm Remand Exh. 8.

11. In his oral testimony on remand, Schoenbohm further explained his reference to possession as follows:

> It was mentioned to -- to set apart from the actual manufacture and trafficking portions of the statute and the supposed relation to electronic means of producing something or trafficking of something which I think is what the statute -- really speaks to.
>
> * * *
>
> The description in here was to set it apart from the conviction of actually stealing money or accessing the account of any telephone subscriber. And I did not steal any money or cause the account of any subscriber to be debited.

Remand Tr. 63. Moreover, Schoenbohm maintained:

> I could explain something here, Mr. -- Judge Luton, that possession was one of the counts for which I was convicted.

Remand Tr. 64. In addition, Schoenbohm stated:

> What I can tell you is that it was not -- it was only used in an explanation of what the device was. And it certainly -- I can understand your concern. But I think I made it sufficiently clear throughout the testimony and submissions that I was convicted for use of a counterfeit access device. But what was that counterfeit access device, there's a lot of speculation of what it was. And I think that was my attempt to explain that these were numbers in my mind that were used.

Remand Tr. 66.

12. The ALJ found that Schoenbohm intentionally mischaracterized his conviction for fraudulent use of a counterfeit access device by repeatedly describing his conviction as being based on possession rather than on the performance of any act, and by testifying that he was convicted "solely of having knowledge" in his mind of certain access codes or numbers that could be used to make long distance calls without paying for them. Schoenbohm's explanations of his emphasis on possession were unconvincing, the ALJ found, because Schoenbohm could have simply said his conviction did not involve either the use of a physical counterfeit access device or theft from subscribers. The ALJ noted that Schoenbohm conceded that his use of the word possession did not really clarify anything. In conclusion, the ALJ held that Schoenbohm's inaccurate description of his conviction in his testimony "was an attempt to portray a softened, more benign, image of the facts underlying [his] felony conviction and was false."

13. In his exceptions, Schoenbohm submits that he did not make any untrue statements in his testimony, but only sought to introduce evidence in mitigation of his criminal conviction. Schoenbohm states that the only counterfeit access devices he had were six digit access numbers in his mind. He claims that he obtained these numbers from the telephone service provider pursuant to the provider's offer of discounted prices to people who used the access numbers to make long distance calls through its system. In explanation of his references to possession, Schoenbohm states that 18 U.S.C. §§ 1029(a)(3) and 1029(a)(4) make it illegal to possess counterfeit access devices. Schoenbohm further states that he thought it was important to make clear in his testimony that he was not convicted of possessing or using a physical access device because it would have been a more serious crime had he produced or manufactured such a device. In this regard, Schoenbohm asserts that he was entitled to explain the circumstances of his conviction, particularly since the court of appeals, in affirming the conviction, refused to review the sufficiency of the evidence against him because of a legal technicality. Schoenbohm concludes that he was permitted to depict his conviction the way he did because his testimony was truthful.

14. We agree with the ALJ that Schoenbohm engaged in misrepresentation and was not fully candid in his hearing testimony in describing his conviction involving the theft of long distance telephone service. There appears to be no credible reason for his misleading testimony other than to attempt improperly to lessen the impact of that conviction on his qualifications. Schoenbohm knew that his conviction was based on his actually making telephone calls, and admitted as much, when specifically asked. Nevertheless, Schoenbohm also claimed at the first hearing that he was convicted "solely of having knowledge in [his] mind of certain telephone codes . . . which . . . were similar to those that could be used to make long distance calls without paying for them." He additionally stated that he was convicted of the crime of "possessing" a counterfeit telephone access device, even though this count was dismissed by the district court on appeal. Similarly, on remand, he again claimed that his conviction was based "solely" on his knowledge of access numbers. Contrary to these assertions, however, Schoenbohm, in fact, was convicted for the fraudulent use of illicit access codes to make long distance telephone calls. As the court of appeals held in affirming his conviction, Schoenbohm violated the statute if he made a single call using a counterfeit access device. This was the gravamen of his crime. Insofar as he characterized his conviction differently in order to reduce its significance upon our consideration of his qualifications, he misrepresented and was lacking in candor.

15. Moreover, the statute under which Schoenbohm was convicted, 18 U.S.C. § 1029(a)(1), contains no reference to the word "possession," which could provide a basis for his deceptive testimony. The subsections of the statute Schoenbohm cites, 18 U.S.C. §§ 1029(a)(3) and 1029(a)(4), are not relevant because they are not the ones under which he was convicted. At the remand hearing, Schoenbohm conceded that the count involving possession for which he was initially convicted was later thrown out and thus was not germane to this proceeding. Remand Tr. 64-65. At the remand hearing, Schoenbohm admitted that his use of the word

possession "just muddies the water." Tr. 66.

16. Although an applicant faced with a character issue may introduce evidence to mitigate the impact of past criminal behavior on his qualifications, see Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1227-29 (1986) (subsequent history omitted) ("1986 Character Policy Statement"), we do not agree with Schoenbohm that his misleading characterization of the reason for his conviction can be excused as merely an attempt to present mitigating evidence. Like any applicant, Schoenbohm was permitted to explain truthfully the nature and circumstances of his conviction, but not to give the false impression that it was based on something other than the performance of specific acts by him, i. e., using a counterfeit access device to make telephone calls. We also reject Schoenbohm's contention that his testimony was justified because he never had full review of the sufficiency of the district court's findings. In fact, the court of appeals found that the evidence against Schoenbohm was "overwhelming" and included the testimony of no fewer than seven witnesses that he used illicit codes to telephone them. Based on the foregoing, we agree with the ALJ's conclusion that Schoenbohm's testimony was intentionally false and lacking in candor. See Black Television Workshop, 8 FCC Rcd 4192, 4198 n. 41 (1993), recon. denied, 8 FCC Rcd 8719 (1993), rev. denied, 9 FCC Rcd 4477 (1994), aff'd sub nom. Woodfork v. FCC, 70 F.3d 639 (D.C. Cir. 1995) (Table) ("Intent is a factual question that can be inferred if other evidence shows that a motive or logical desire to deceive exists, as is the case here.")

B. Ex Parte Communications

17. The Commission's ex parte rules provide that:

> No person shall solicit or encourage others to make any presentation which he or she is prohibited from making under the provisions of this subpart.

47 C.F.R. § 1.1210.

18. On April 3, 1995, Schoenbohm made amateur radio transmissions, which included the following:

> Well, I'm not allowed, I'm not allowed under the ex parte rules to ask for assistance of, with people in political positions but other people, if they feel that government is overbearing or I'm being treated unfairly, have every right to point this out to their elected representatives. Congressional inquiries may indicate that these things will be conducted under the scrutiny of greater illumination but I am not permitted under ex parte rules to engage in asking for assistance. . . . [T]he person elected to Congress presently is from here. . . . He is a wonderful person and I was very, very instrumental in getting him elected to Congress. . . . [P]resently though, he is a nonvoting delegate. We don't have a vote except in

> committee and I just don't know what he could do in a situation like this but I am not permitted, I'm not permitted at this time because of ex parte rules to make any requests for political intervention. Other people could do it if they're so disposed but I can't do it. Go ahead. . . . It's in the Longworth Building in Washington, D.C. . . . Victor Frazer, F-R-A-Z-E-R, Victor Frazer. His phone number is area code 202-225-1700. . . . Getting back to the other thing. I think that there is one thing that can be established. If you have observed KV4FZ operating his station in a manner that you think is beneficial to communications, emergency communications, or during Hugo, or Hurricane Andrew, or Hurricane Frederick or Bob, I don't go back to David and Hurricane Gilbert, the one in Jamaica. If you have any indication or any observation, that is something you can raise in a letter to someone else if you observed it, it may have an impact. I don't know if the other things will or will not, but you may ask. I think what you should do, if it were me I would ask the question of the gentleman that you plan to write whether or not he feels, he feels the cancellation or the refusal to renew the license of KV4FZ would have a negative impact on the communications readiness and preparedness. . . . Whether or not to renew the license or the failure to renew the license would have a negative impact on the people of his constituency. That might make a difference, but I, it would depend on how things are crafted. AB4PW. KV4FZ.

Schoenbohm Exh. 3, pp. 6-9.

19. Schoenbohm testified at the first hearing that he was unfamiliar with the ex parte rules at the time this case was designated for hearing and did not realize that it might be improper to solicit help from elected officials. As a consequence, he stated that, both before and shortly after designation, he wrote a number of letters to elected officials requesting assistance. In March 1995, Schoenbohm further stated, he retained communications counsel who explained the ex parte rules to him, after which he wrote no further letters seeking help from public officials. Schoenbohm claimed that his April 3, 1995 remarks were only intended as "an exposition of [his] newly acquired knowledge" of the ex parte rules. Schoenbohm Exh. 7. At the first hearing, Schoenbohm also introduced the statement of Malcolm B. Swan, an amateur licensee, who stated that, during a two-way communication with Schoenbohm on April 3, 1995, he asked Schoenbohm for the name of the Congressional representative for the Virgin Islands, and that Schoenbohm supplied Delegate Frazer's name. Swan also stated that Schoenbohm did not solicit him to write or contact any member of Congress, and he did not do so. Schoenbohm Exh. 5.

20. In written testimony at the remand hearing, Schoenbohm reiterated that, in his April 3, 1995 conversation with Swan, he was merely expounding on his new understanding of the ex parte rules. He stated that he told Swan **that** he (Schoenbohm) could not write to politicians or people at the FCC, "but that others could do so." Schoenbohm maintained, however, that he

did not ask Swan to write to anyone. Schoenbohm also stated that he did not know that the rules precluded him from encouraging other people to write on his behalf, and that, had he known of that portion of the rules, he "would not have said what [he] said to Mr. Swan, lest it be misinterpreted as solicitation." Schoenbohm Remand Exh. 8. In his oral testimony on remand, Schoenbohm further asserted that his language regarding the ex parte rules in his conversation with Swan was simply "a poor choice of words." Schoenbohm also claimed that, in the conversation, Swan asked him how to seek assistance in presenting a grievance to the government, and that Schoenbohm responded by using his own situation to illustrate the format for communicating with a congressman. He did so, Schoenbohm stated, because "that is just my style." Remand Tr. 95, 98-99, 103, 107-08.

21. The ALJ concluded that the transcript of the April 3, 1995 amateur radio transmission establishes that Schoenbohm solicited others to make ex parte presentations on his behalf in this proceeding. The ALJ further found that Schoenbohm's claim that he did not intend to solicit prohibited presentations is contradicted by the plain meaning of Schoenbohm's words. Even if Schoenbohm provided Delegate Frazer's name in response to Swan's request, the ALJ stated, it is clear that Schoenbohm was encouraging Swan and any others who were listening to solicit ex parte communications on his behalf. The ALJ also rejected, as unsupported by the evidence, Schoenbohm's claims that he was merely expounding upon his newly acquired knowledge of the ex parte rules, and that he was only using his own situation to demonstrate how to contact a congressman. The ALJ concluded that Schoenbohm misrepresented and was lacking in candor. In addition, the ALJ found that, after the ex parte rules were explained to him by his attorney, Schoenbohm knew or should have known that his April 3, 1995 remarks were impermissible.

22. In his exceptions, Schoenbohm states initially that the ALJ's treatment of the ex parte issue "raises troubling questions" about Schoenbohm's rights to free speech and to petition the government for redress of grievances. Beyond this claim, Schoenbohm asserts that the ALJ failed to consider the totality of the evidence. Specifically, Schoenbohm alleges that he frequently discusses the FCC's rules and his knowledge of them, and the transmission at issue is just another example of his long, generalized conversations about the rules. As such, Schoenbohm maintains, it should be understood as a personalized illustration of how to contact the FCC about a grievance. Schoenbohm also contends that there was no reason for him to ask Swan to contact Delegate Frazer on his behalf because Schoenbohm was a friend of Frazer's, and a letter from Swan to Frazer would have been of no value to Schoenbohm. In this regard, Schoenbohm states, no communications were made to the Commission on his behalf. Additionally, Schoenbohm asserts that the ALJ erred in expecting him to be aware of the ex parte rules because they are contained in a part of the FCC's rules that is not readily available to amateur licensees. Schoenbohm concludes that he testified truthfully that he did not intend in his conversation to solicit ex parte contacts.

23. First, we reject Schoenbohm's stark First Amendment claim as unsupported and

incorrect. The ex parte rules do not infringe upon an applicant's constitutional right to discuss the proceeding with others. Rather, they protect the integrity of the administrative process by ensuring that the Commission's decisions are fair and impartial and that they are based on a public record free of any taint of improper influence from non-record communications between decision makers and outside persons. See Ex Parte Communications, 2 FCC Rcd 3011, 3012 (1987). We do not believe it violates the First Amendment to require that presentations to the agency be made on the record and to require that solicitations of presentations to the agency be limited to requests for on-the-record presentations.

24. With regard to Schoenbohm's substantive arguments, we find that the ALJ properly reviewed the record evidence and concluded that Schoenbohm once again misrepresented and was lacking in candor. Schoenbohm's principal testimony at both hearings that he was merely speaking generally and at length about his understanding of the ex parte rules in his April 3, 1995 conversation with Swan finds no support in the wording or context of that transmission. Schoenbohm informed whoever was listening that although he could not seek "political intervention" on his own behalf, "other people could" do so. He then proceeded to provide the name (with spelling), address, and telephone number of Virgin Islands congressional Delegate Victor Frazer. Furthermore, Schoenbohm suggested specific favorable information regarding his station's operations to be included in any letter sent to a member of Congress, and recommended asking the member "whether . . . the failure to renew the license would have a negative impact on the people of his constituency." He informed his listeners that such communications "may have an impact" and "might make a difference." Thus, whatever his professed tendency may be to discuss his knowledge of the Commission's rules during his amateur radio transmissions, Schoenbohm was not engaged in this instance in a "generalized conversation" about the ex parte rules, as he claims, but was providing particularized information to listeners and soliciting specific assistance in this proceeding. See Voice of Reason, Inc., 37 FCC 2d 686, 709 (Rev. Bd. 1972), recon. denied, 39 FCC 2d 847, rev. denied, FCC 74-476, released May 8, 1974 (over the air solicitations of letters from listeners violate ex parte rule).

25. Moreover, Schoenbohm's testimony at the remand hearing that he was merely using his own case to illustrate the format for contacting a congressman also finds no support in the language or context of the transmission. Nowhere in the transcription of the conversation does Schoenbohn state or even hint that this was his intended purpose, or that he was only responding to a request for information from Swan. Although Schoenbohm additionally argues in his exceptions that he had no actual need to ask Swan to contact Delegate Frazer on his behalf, in fact, Schoenbohm acknowledged that he could not contact Frazer directly. Indeed, Schoenbohm's immodest claim in the transmission that he "was very, very instrumental in getting [Frazer] elected to Congress," clearly implies a belief that contacts made on Schoenbohm's behalf could be helpful to him because the delegate might reciprocate Schoenbohm's support by providing assistance in this proceeding. In sum, we agree with the ALJ that Schoenbohm's various testimonial claims and explanations of his conduct were false

and lacking in candor. Finally, we need not address Schoenbohm's exception to the ALJ's conclusion that Schoenbohm knew or should have known that his remarks were impermissible under the rules. Schoenbohm's disqualification is premised on his lack of candor at the hearing, not on his alleged violation of the ex parte rules. See ¶ 27, infra.

C. Overall Conclusions

26. We have found that Schoenbohm misrepresented and lacked candor in his testimony regarding both his felony conviction and the facts underlying the desiganted ex parte issue. This was a serious breach of licensee responsibility by Schoenbohm because the Commission has consistently held that it has a right to expect all applicants and licensees to be completely candid in their hearing testimony. See William M. Rogers, 92 F.C.C. 2d 187, 189 (1982); Richardson Broadcast Group, 7 FCC Rcd 1583 (1992), recon. denied sub nom. Elizabeth M. Younts, 8 FCC Rcd 1583 (1993), aff'd by judgment, 995 F.2d 306 (D.C. Cir. 1993). Moreover, our conclusion is reinforced by the fact that Schoenbohm's conviction was for a crime involving fraud, which is a subject area the Commission has traditionally considered to be pertinent to its evaluation of a licensee's character. See 1986 Character Policy Statement, 102 F.C.C. 2d at 1195 (specific consideration given to adjudicated fraud, criminal misconduct involving false statements or dishonesty, and broadcast-related antitrust violations). Accordingly, we conclude that the lack of candor and misrepresentation along with the felony conviction together justify disqualifying Schoenbohm.

27. Schoenbohm argues that he is entitled to renewal of his amateur license because the conduct underlying his conviction is now remote in time, his sentence was a light one, he has since had a spotless record and been fully rehabilitated, and he has never violated any of the FCC's amateur rules. These arguments, which are offered in mitigation of Schoenbohm's criminal behavior, fall wide of the mark. Schoenbohm does not support his claim of rehabilitation with any evidence of his reputation for truthfulness in the community. See Alessandro Broadcasting Co., 99 FCC 2d 1, 11 n. 13 (Rev. Bd. 1984) (subsequent history omitted) (applicant's rehabilitation evidenced by issuance of certificate of rehabilitation by the state court and character references from people familiar with his crime). Additionally, the findings here establish that Schoenbohm's record since his conviction has not been "spotless," but includes testimony before the Commission that was false and lacking in candor. And, as noted, Schoenbohm's criminal activity involved fraudulent conduct, a matter of particular concern to the Commission. On the basis of the totality of the evidence, therefore, we conclude that Schoenbohm has not demonstrated that he possesses the basic character traits of truthfulness and reliability that are essential to licenseeship. See 1986 Character Policy Statement, 102 F.C.C. 2d at 1183, 1190-91 (focus is on propensity to deal truthfully with Commission and to comply with rules and policies); see also 1990 Character Policy Statement, 5 FCC Rcd 3252, 3253 (1990) (all licensees, not just broadcasters, are required to tell the truth to the

Commission).[2]

28. ACCORDINGLY, IT IS ORDERED, That the application of Herbert L. Schoenbohm to renew his amateur station and operator licenses IS DENIED.

29. IT IS FURTHER ORDERED, That Herbert L. Schoenbohm IS AUTHORIZED to continue operation of his amateur station until 12:01 A.M. on the ninety-first day following the release date of this Decision to enable him to conclude the station's affairs; PROVIDED, however, that if Schoenbohm seeks reconsideration or judicial review of our Decision, he is authorized to continue to operate his station until 12:01 A.M. on the ninety-first day following the release date of any order on reconsideration or the completion of judicial review, whichever is later. Judicial review is completed when the forum which has jurisdiction to review this proceeding issues its mandate: provided, however, that in a case when the mandate issues prior to the expiration of the period for seeking Supreme Court review and the permittee seeks Supreme Court review, judicial review will not be completed until the Supreme Court denies the petition for certiorari or issues a ruling on the merits affirming the denial of the application, whichever occurs later.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

[2]One final matter warrants brief comment. Asserting that "a small group of amateurs" have made "scurrilous claims" against Schoenbohm and that "[h]e wants the reviewing authority to know that" he is not "a Nazi, an anti-Semite or a racist" (Br. at 11-12), Schoenbohm attaches to his exceptions a letter from one C. Schwartzbard to Thomas D. Fitz-Gibbon, a Bureau attorney in this proceeding, and a responsive declaration by Schoenbohm. Schoenbohm has not made any request or showing that the record should be reopened to receive these materials and, as they have not been shown to have relevance to any issue in this case or to bear upon any finding by the ALJ, we have not considered them in reaching our conclusion.