



Do You Know?

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Do you know how an applicant/licensee gets to a hearing before an Administrative Judge?

The Mobility Division of the Wireless Telecommunications Bureau within the FCC manages applications for amateur radio licenses.

- Most applications for amateur radio licenses pass through the ULS unseen by the personnel in the Mobility Division.
- When applications are flagged with Status code “1” (I’ve never seen this) or Status code “2”, they are taken offline and manually reviewed by the folks in the Mobility Division before they are processed.
- If the application is flagged because the applicant answered “Yes” to the felony question, then they wait for the applicant’s explanation to arrive via e-mail or snailmail.
 - Upon receipt of the explanation, personnel within the Mobility Division presumably review the explanation and determine whether to grant the license or not.
 - The criteria for approval is not published.
- Since 7 September 2017, the FCC has granted applications to persons convicted of the following felonies:
 - Vehicular homicide
 - Possession of drugs
 - Sale of drugs
 - DUI
 - Theft
- However, the FCC has not granted any applications to date from applicants whose felony conviction involved sexual offenses involving children (e.g., Possession of child pornography, inappropriate behavior with minors, etc.).
- With respect to felonies in general, sexual offenses involving children appears to be a huge red flag.
- Prior to 7 September 2017, the FCC, upon learning that an applicant or licensee had been convicted of a felony that involved sexual offenses involving children, routinely issued a **Letter of Inquiry** seeking confirmation and depending on response, a **Hearing Designation Order** or an **Order to Show Cause** was sent to the applicant or licensee, as appropriate.

The authority for addressing felons is found in Section 309(e) of the Communications Act, as amended: The Commission is required to designate an application for evidentiary hearing if a substantial and material question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity. The character of an applicant is among those factors that the Commission considers in determining whether the applicant has the requisite qualifications to be a Commission licensee.

With the implementation of the felony question, the applicant who answers “yes”, is required to provide an explanation of the circumstances related to their felony conviction. If the Mobility Division is unable to determine the merits of an application from an applicant convicted of felony, the application will be forwarded to an Administrative Law Judge.

Basically, it appears that there are two methods for designating an application for a hearing:

1. **Hearing Designation Order.** This can be initiated by the Mobility Division, Wireless Telecommunication Bureau or possibly by the Enforcement Bureau. The text of the order will look similar to this:

By this Hearing Designation Order, we commence a hearing proceeding before a Commission Administrative Law Judge (ALJ) to determine whether the above-captioned application for a new Amateur Radio Service license should be granted. Based on the information before us, we believe that the applicant's actions raise a substantial and material question of fact as to whether he possesses the requisite character qualifications to be a Commission licensee. Because we are unable to make a determination on the record currently before us that grant of this application for a new amateur license would serve the public interest, convenience, and necessity, we hereby designate the application for hearing, as required by Section 309(e) of the Communications Act of 1934, as amended.

Following background information and discussion the Hearing Designation Order will conclude with ordering clauses.

- *The captioned application IS DESIGNATED FOR HEARING in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:*
 - *a) To determine the effect of the applicant's felony adjudication(s) on his qualifications to be licensed by the Commission.*
 - *b) In light of the evidence adduced pursuant to the foregoing issue, to determine whether the applicant is qualified to be a Commission licensee.*
 - *c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether the captioned application should be granted.*
- *In order to avail himself of the opportunity to be heard, the applicant, in person or by his attorney, SHALL FILE with the Commission, within twenty days of the mailing of this Hearing Designation Order to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.*
- *If the applicant fails to file a written appearance within the twenty-day period or has not filed prior to the expiration of the twenty-day period, a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administrative Law Judge SHALL DISMISS the captioned application with prejudice for failure to prosecute.*
- *The Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.*
- *The burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above SHALL BE on the applicant.*
- *A copy of this Hearing Designation Order or a summary thereof SHALL BE PUBLISHED in the Federal Register.*

Authority: This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

2. Order to Show Cause. The Enforcement Bureau initiates these orders. The text of the order will look similar to this:

By this Order to Show Cause, and pursuant to Sections 312(a) and (c) of the Communications Act of 1934, as amended, the Federal Communications Commission's Enforcement Bureau commences a hearing proceeding before an administrative law judge. The purpose of this hearing is to determine whether the license of the above-captioned Amateur Radio Station and Amateur Radio Operator licensee, is qualified to remain a Commission licensee in light of his felony conviction and whether his authorization should be revoked.

Following background information and discussion, the Order to Show Cause will conclude with ordering clauses.

- *The applicant is hereby ORDERED TO SHOW CAUSE why his authorization for an Amateur Radio Station SHOULD NOT BE REVOKED in a proceeding before an administrative law judge, at a time and place to be specified in a subsequent order, upon the following issues:*
 - *(a) to determine the effect of the applicant's conviction(s) on his qualifications to be and to remain a Commission licensee; and*
 - *(b) to determine, in light of the evidence adduced pursuant to the foregoing issue, whether the applicant is qualified to be and to remain a Commission licensee; and*
 - *(c) to determine, in light of the evidence adduced pursuant to the foregoing issues, whether the license of the applicant for Amateur Radio Station XXXXXX should be revoked.*
- *To avail himself of the opportunity to be heard, the applicant, in person or by his attorney, SHALL FILE with the Commission, within 30 calendar days of the release of this Order to Show Cause, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.*
- *If the applicant fails to timely file a written appearance within the 30-day period, or has not filed a petition to accept, for good cause shown, a written appearance beyond the expiration of the 30-day period, his right to a hearing shall be deemed by the Presiding Administrative Law Judge to be waived, and the Presiding Administrative Law Judge shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.*
- *The burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above SHALL BE on the Enforcement Bureau.*
- *A copy of this ORDER TO SHOW CAUSE shall be sent, by Certified Mail, Return Receipt Requested, and by regular United States mail to: the applicant at the address on file with the Commission.*
- *A copy of this ORDER TO SHOW CAUSE, or a summary thereof, shall be published in the Federal Register.*

An Administrative Law Judge, appointed under the Administrative Procedure Act, presides at the hearing during which documents and sworn testimony are received in evidence, and witnesses are cross-examined. At the conclusion of the evidentiary phase of a proceeding, the Presiding Administrative Law Judge writes and issues an Initial Decision which may be appealed to the Commission.

Why is this important, you ask? It's simple: The FCC's history involving those types of crimes has been consistent and is best summed up by this boilerplate statement found in prior orders:

*In assessing character qualifications in broadcast licensing matters, the Commission considers, as relevant, "evidence of any conviction for misconduct constituting a felony." The Commission has found that "[b]ecause all felonies are serious crimes; any conviction provides an indication of an applicant's or licensee's propensity to obey the law" and to conform to provisions of both the Act and the agency's rules and policies. In addition, certain felonies involving egregious misconduct "might, of its own nature, constitute prima facie evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee." As noted above, the Commission has consistently applied these character standards to applicants and licensees in the Amateur Radio Service. Thus, **felony convictions, especially those involving sexual offenses involving children, raise questions regarding an amateur licensee's qualifications.***

For those applicant's whose felony involved sexual offenses involving children, their applications will likely be resolved as follows:

- Unlicensed applicants: They will probably receive a Hearing Designation Order.
- Licensed applicants: They could receive a Hearing Designation Order or an Order to Show Cause.

The FCC has been consistently successful in their efforts to deny a license or revoke an existing license of applicants whose felony conviction involved sexual offenses involving children.

The process to deny or revoke a license is not a speedy process and can take at least a year or more.

- I found 5 instances between 2003 and 2007 where someone notified the FCC that an applicant or a licensee had been convicted of a felony involving sexual offenses involving children. The time to process these applications/licenses from initial FCC action to denial or revocation was about 15-17 months.
- The longest case took 7 years from Order to Show Cause to Dismissal. It was complicated.
- During the first 13 weeks of the felony question, 17 applicants remain in pending status. Thirteen of these applicants were convicted of a felony that involved a sexual offense involving children. I suspect the other 4 were also convicted of the same crime, given the duration of their pending status.
- How these increased numbers will impact the process is unknown.

So, what should we do if an applicant contacts us to ask about the status of an application? Politely inform the applicant of the following:

1. We do not know how long the review of a felony explanation will take.
2. The FCC does not notify the Laurel VEC, its VE teams and VEs of the results of their reviews.
3. Applicants can contact the Mobility Division at (202) 418-0600 to ask about their application status.

Now You Know