

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

In the Matter of	)	WT Docket No. 01-344
	)	
KEVIN DAVID MITNICK	)	File No. 00000-58498
	)	
Licensee of Station N6NHG in the Amateur Radio	)	
Service for Renewal of Station License	)	
	)	
KEVIN DAVID MITNICK	)	
	)	
For Renewal of Amateur Radio General Class	)	
Operator License	)	

APPEARANCES

Lauren A. Colby, Esquire on behalf of Kevin David Mitnick; James W. Shook, Esquire and Dana E. Leavitt, Esquire on behalf of the Chief, Enforcement Bureau.

INITIAL DECISION  
OF  
CHIEF ADMINISTRATIVE LAW JUDGE RICHARD L. SIPPEL

Issued: December 20, 2002

Released: December 23, 2002

PRELIMINARY STATEMENT

1. This is a proceeding to determine whether the above-captioned Amateur Radio Service renewal application filed by Kevin David Mitnick (“Mitnick”) should be granted. Hearing Designation Order, FCC 01-359, 16 FCC Rcd 22,740 (2001) (“HDO”). Mr. Mitnick is a convicted felon. His illegal activities include the interception of electronic communications, computer fraud, wire fraud, and damaging computers.<sup>1</sup>

<sup>1</sup> See Judgment and Probation Order, United States v. Kevin David Mitnick, United States District Court for the Central District of California, CR96-506-MRP, CR96-881-MRP, August 9, 1999; United States v. Kevin David Mitnick, Case No. 595CR37B0, United States District Court for the Eastern District Court of North Carolina, July 5, 1995.

His criminal behavior raises a substantial and material question of fact about his character. Id.

2. The Commission ordered a hearing and set the issues:
  - (a) To determine the effect of the criminal convictions of Kevin David Mitnick on his qualifications to be and remain a Commission licensee.
  - (b) In light of the evidence adduced pursuant to the foregoing issue, to determine whether Kevin David Mitnick is qualified to be and remain a Commission licensee.
  - (c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether the captioned application filed by Kevin David Mitnick should be granted.

HDO at Para. 10. The burden of proceeding with the evidence and the burden of proof with respect to all issues were assigned to Mr. Mitnick. HDO at Para. 13.

3. A hearing was held on June 18, 2002. Additional testimony was taken by speaker-phone on June 24, and June 26, 2002. The Presiding Judge closed the record and directed the filing of proposed findings of fact and conclusions of law (Tr. 167).<sup>2</sup> On September 19, 2002, Mr. Mitnick and the Bureau timely filed Joint Proposed Findings of Fact and Conclusions of Law that support granting the application for renewal.

## FINDINGS OF FACT

### Conflicted Pursuits of Crime and Radio

4. Mr. Mitnick was a “hacker”.<sup>3</sup> His activities consisted of unlawfully accessing other peoples' computers and reading their source codes. (Tr. 80-81.) He began hacking when he was seventeen years old, and continued until he was thirty-one. (Tr. 97-100.) He started hacking as an inquisitive teenager and wound up a disgraced felon. (Tr. 95-96.) Hopefully, inquisitive teenagers now will learn the value of staying within the law.

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<sup>2</sup> "Tr. -" refers to the transcript of the hearing proceedings. "EB Exh. \_\_\_" refers to the Bureau exhibits. Mr. Mitnick's exhibits are referred to as "Mitnick Exh. \_\_\_".

<sup>3</sup> A “hacker,” also called a “cracker,” is a person who “cracks” computer and telephone systems by gaining access to passwords, or by “cracking” the copyright protection of computer software. See Newton's Telecom Dictionary (2001) at 178, 319.

5. In 1988, Mr. Mitnick was arrested for computer hacking. (Tr. 57.) He signed a plea agreement that provided for a year of imprisonment and three years of supervised release, expiring in 1992. (Tr. 57.) In 1993, he learned that a warrant had been issued against him for violating terms of his supervision. (EB Exh. 5 at 9.) Foolishly, instead of turning himself in, Mr. Mitnick became a fugitive and began using false names to avoid arrest. (Tr. 57-60.) He also began using counterfeit and stolen telephone numbers to make telephone calls. (Tr. 56-57, 98-101.) And he continued hacking into computer systems. (EB Exh. 5 at 2-9.)

6. Mr. Mitnick again was arrested in 1995, and spent the next five years in prison. (Tr. 55, 57.) In 1996, a federal indictment was handed down. (EB Exh. 1.) The indictment charged Mr. Mitnick with having carried out a scheme to defraud by means of false pretenses, representations and promises. He was charged with obtaining access to computers of manufacturers of operating systems, manufacturers of cellular telephones, internet service providers, and educational institutions. He also was charged with stealing, copying, and misappropriating computer software. (EB Exh. 1 at 1-2.) Mr. Mitnick admitted to obtaining software by fraudulent means. (EB Exh. 5, p. 2.) He was sentenced to forty-six months in prison, and he was directed to pay restitution in the amount of \$4,125.00. (EB Exh. 3 at 2; EB Exh. 5 at 2; Tr. 102, 104.)

7. Mr. Mitnick finally was released from prison on January 21, 2000. He is on supervised probation until January 20, 2003 (Tr. 50, 92).

### **Conduct as Licensee**

8. In 1976, Mr. Mitnick received a license to operate as a General Class Operator under call sign WA6VPS. He surrendered that license before being issued call sign N6NHG in 1986. (EB Exh. 5 at 2; Tr. 64-65.) Mr. Mitnick surrendered his first license at the urging of his juvenile parole officer who had received a complaint from another amateur operator alleging that Mr. Mitnick had interfered with his station signal. (Tr. 86-87.) Mr. Mitnick testified that those allegations were false. (Tr. 87-88.)<sup>4</sup>

9. In 1999, just before his release from prison, Mr. Mitnick completed an application on Form 605 to renew his amateur radio license. (EB Exh. 6; Tr. 53, 65.) The application form requires a "street" address and a telephone number. (EB Exh. 6 at 1.) Mr. Mitnick provided a "street" address for Las Vegas, Nevada, which was his grandmother's residence. (Tr. 65-67; EB Exh. 6 at 1.) He also provided a telephone number belonging to his grandmother. (Id.) But he was residing in prison at the time and

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<sup>4</sup> There is insufficient evidence in this record to determine whether there was any interference caused by Mr. Mitnick in operating under former call sign WA6VPS.

so the disclosures of address and telephone number were, at a minimum, misleading. (Tr. 47-48, 65-68.) On Form 605, Mr. Mitnick certified that the application was “true, complete, correct, and made in good faith.” (EB Exh. 6 at 2.) By way of explanation, Mr. Mitnick claims he provided his grandmother’s address on his Application because he had once lived there, his radio equipment was located there, and he was using it as his mailing address while in prison. (Tr. 65-67.)<sup>5</sup> As an example, people from a support group in which he was involved would call and leave messages with his grandmother which she would forward to him in prison. (Id.)

10. Mr. Mitnick was asked by counsel if he had reason to believe that the Commission knew that he was in prison as of the date of the renewal application. Mr. Mitnick answered in open court:

Sure, I mean, it was such weekly---it was weekly published. So I assumed that the whole country knew I was in federal prison. I mean, my case was the highest profile case. It was front page of the New York Times, so I had no doubt.

(Tr. 68.)

11. Since 1986, Mr. Mitnick has been licensed to operate in the amateur radio service. He represents that his interest in amateur radio began with his desire to help improve existing technology in the amateur radio service. Mr. Mitnick provided assistance at special events, such as the March of Dimes, as an amateur radio operator. (Mitnick Exh. 1 at 3; Tr. 85.) He also assisted repeater owners in the maintenance and operation of their equipment. (Mitnick Exh. 1 at 3; Tr. 86.) Mr. Mitnick testified that since being released from prison, he has operated his amateur radio on a daily basis. (Tr. 89-92.)

### **Rehabilitation Evidence**

12. Mr. Mitnick is a convicted felon whose continued licensing at the Commission depends on his rehabilitation.

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<sup>5</sup> Mr. Mitnick’s grandmother would either forward his mail to him or hold it for him. (Tr. 67.) Mr. Mitnick also used his grandmother's telephone number because he could not receive direct-dialed calls while in prison. (Tr. 67-68.)

### **Post Prison Conduct**

13. Physicians treating his father for a heart condition ordered surgery within several hours of Mr. Mitnick's prison release. From that point until his father's death, Mr. Mitnick spent a great deal of time caring for his father and helping run his father's construction business. Several months later, Mr. Mitnick's father was diagnosed with lung cancer, and passed away in July 2001. (Mitnick Exh. 1.)

14. Mr. Mitnick has a new career in broadcast radio, public speaking, and writing. He teaches others to minimize risks associated with the kinds of misconduct that he knew so well in making computer intrusions. In March 2000, at the invitation of United States Senator Fred Thompson, he testified on subjects related to the security and reliability of information systems owned and operated by the federal government. (Mitnick Exh. 1 at 1-2; Tr. 73-75.)

15. Also in 2000, Mr. Mitnick provided information to the Commission on National Security in connection with a report for the President-elect of the United States on protecting infrastructures from foreign and domestic enemies. Mr. Mitnick spent two days discussing strategies, methods, and tactics used by computer intruders and the safeguards that would help protect assets. (Mitnick Exh. 1 at 2.)

16. During 2001, Mr. Mitnick hosted a weekly radio show, "The Darkside of the Internet," through which he sought to demystify the Internet and assist in fostering privacy and security. He instructed on vulnerabilities he knew about relating to computers and telephone systems. A business owner who had been victimized retained Mr. Mitnick to investigate the cause and identity of the person blocking, redirecting, and interfering with telephone calls. He also expects to testify before the Nevada Public Services Commission on the security of the state's public telephone network. Mr. Mitnick believes that his expertise and experience will substantially assist the Commission. (Mitnick Exh. 1 at 2; Tr. 74-75.)

17. Mr. Mitnick has finished co-writing a book on computer systems and confidential information. The book was written to assist government, business, and the public in protecting computer systems. (Mitnick Exh. 1 at 2; Tr. 75-76.) He also is producing a training film on computer security. (Tr. 54.) Mr. Mitnick now realizes that he enjoys a better income than at any other time in his life. (Mitnick Exh. 1 at 3; Tr. 94-95, 100.)

### **Probation Officer**

18. Mr. Larry Hawley, Mr. Mitnick's Probation Officer, submitted a written statement that was favorable to Mr. Mitnick. (Mitnick Exh. 4 at 1.) Mr. Hawley has been supervising Mr. Mitnick since his release from prison in January 2000. He finds that Mr. Mitnick has not violated the law during supervision and has made a positive start in

adjusting to society. He also finds that Mr. Mitnick has been in compliance with terms and conditions set by the court and has followed instructions. Mr. Hawley affirms that Mr. Mitnick has turned his efforts to radio talk shows and writing about computer security. While under supervision, Mr. Mitnick was allowed to operate his ham radio which Mr. Hawley believes he should be permitted to retain.

### **Alex Kasper**

19. Mr. Kasper is a telecommunications consultant. He is also a former amateur radio licensee. Mr. Kasper has known Mr. Mitnick since 1987. Mr. Kasper submitted a written statement on Mr. Mitnick's behalf. (Mitnick Exh. 2 at 1-2.) Mr. Kasper observed that in the two years since Mr. Mitnick's release from prison, he has contacted several of his victims and has apologized to them. Mr. Kasper was present at some of those meetings and observed that Mr. Mitnick showed remorse toward the victims. He has concluded that Mr. Mitnick has been honest and truthful with him.

### **David G. Hall**

20. Mr. Hall is the senior vice president in charge of programming at Premiere Radio Networks in Sherman Oaks, California. (Mitnick Exh. 3.) Previously, he was the vice president of programming at radio station KFI, Los Angeles, California (Tr. 125). While at KFI, he met Mr. Mitnick. He saw Mr. Mitnick "working tirelessly" to improve his life and to benefit others. (*Id.*) He offered Mr. Mitnick the use of a studio at which to tape a new radio program. (Tr. 131-132.) He found that Mr. Mitnick reacted positively to mentoring. (Tr. 130.) Mr. Hall has no concern about Mr. Mitnick's ability to deal with the Commission in an honest and forthright manner. (Tr. 132.)

### **Carol Long**

21. Ms. Long is an editor for John Wiley & Sons. (Mitnick Exh. 5, Tr. 149-150). She identifies topics for books and enlists authors to write on those topics. (Tr. 151-152.) In the fall of 2000, Mr. Mitnick's agent contacted Ms. Long about a book proposal. She knew of Mr. Mitnick's reputation and knew that he had spent time in prison. Ms. Long met with him twice over a period of fifteen months. In December of 2001, through her efforts, John Wiley & Sons entered into a formal book contract with Mr. Mitnick, which is now completed. As the person responsible for Mr. Mitnick fulfilling the terms of his book contract, Ms. Long found Mr. Mitnick to be cooperative. (Tr. 160-161.)

## CONCLUSIONS OF LAW

### Standards for Rehabilitation

22. Kevin David Mitnick is a convicted felon who perpetrated interceptions of electronic communications, computer fraud, wire fraud, and damaging computers. The Commission concluded that this behavior raises a substantial and material question of fact as to whether he possesses the requisite character qualifications to be and remain a Commission licensee. Because the Commission was unable to make a determination that a grant of Mr. Mitnick's renewal applications would serve the public interest, convenience, and necessity, the Commission designated the question for hearing. See §309(e) of the Communications Act of 1934, as amended, and HDO at Para. 1.

23. In assessing Mr. Mitnick's basic qualifications, the Commission must predict whether he will be honest in dealing with the Commission and will abide by the Commission's rules and the Communications Act. See Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1190-91 (1986) ("Character Policy Statement").<sup>6</sup>

24. In considering Mr. Mitnick's license renewals, his past misconduct must be considered in determining whether he possesses the requisite character qualifications to remain a licensee. In evaluating the weight of his prior misconduct, to be considered are the willfulness of the misconduct, the frequency of such behavior, its currency, the seriousness of the misconduct, efforts made to remedy the wrong, and Mr. Mitnick's record of compliance with Commission rules and rehabilitation. Policy Statement and Order, 5 FCC Rcd 3252, 3254 n. 4 (1990).

### Analysis of Rehabilitation

25. There are no questions to resolve concerning willfulness, frequency or seriousness of criminal behavior. Each of those elements is established in the HDO.<sup>7</sup> But there has been hearing evidence of remorse, restitution, and a considerable passage of time. The relevance of this evidence is proof of rehabilitation.

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<sup>6</sup> Also considered were Policy Statement and Order, 5 FCC Rcd 3252 (1990) (modifications to Character Policy Statement); and Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992) (non-FCC misconduct effecting character assessment).

<sup>7</sup> For purpose of this case, the Commission has given res judicata effect to the criminal convictions when the case was designated for hearing. See HDO at Para. 9.

26. The Commission considers as indicia of rehabilitation whether Mr. Mitnick has avoided any significant wrongdoing since the prior disqualifying misconduct; the amount of time elapsed since the misconduct; Mr. Mitnick's reputation for good character in the community; and meaningful measures taken by Mr. Mitnick to prevent future misconduct. See Character Policy Statement, 102 FCC 2d at 1228-1229.

27. The determination of sufficient rehabilitation is fact driven and therefore the impact of rehabilitation in any given case must be examined on a case by case basis.<sup>8</sup> In a case involving an amateur radio license renewal, where the renewal applicant had been convicted of a felony for fraudulently using counterfeit access codes, the application was denied because the felony conviction was exacerbated by the applicant deliberately misrepresenting facts about the nature of his conviction while testifying in the renewal proceeding. There, false testimony offset the value of rehabilitation evidence. See Herbert L. Schoenbohm, 13 FCC Rcd 23, 7444, 23, 777 (1998), aff'd., Herbert L. Schoenbohm v. FCC, 204 F.3d 243 (D.C.Cir. 2000).<sup>9</sup> The court noted that complete candor of a licensee is important to the Commission because "effective regulation is premised upon the agency's ability to depend upon the representations made to it by its licensees." Id. Compare Leflore Broadcasting Co. v. FCC, 636 F.2d 454, 461 (D.C. Cir. 1994).

28. The Commission's policy is that "[o]nly in the most egregious case need termination of all rights be considered." Character Policy Statement supra. at 1228. However, Mr. Mitnick's misinforming the Commission about his address and telephone number in his renewal application cannot be ignored. There was thought given to those disclosures. But there is lacking any evidence of an intent or motive to deceive the Commission, particularly in light of Mr. Mitnick's explanation which went unchallenged, is reasonable, and tends to negate deceit. See e.g. Garden State Broadcasting Ltd. v. FCC, 996 F 2d 386, 393-394 (D.C. Cir. 1993) (a disqualification requires evidence of deliberate or intentional misrepresentation). See also Scott & Davis Enterprises, Inc., 88 FCC 2d 1090, 1099 (Review Bd. 1982) (improper motive to deceive must be shown).

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8 Compare In re Richard Richards, 10 FCC Rcd. 3950, 3959 (Review Bd.1995) (felonious drug trafficking conviction presented close call but LPTV renewal was granted based on rehabilitation evidence); In re Alessandro Broadcasting Co., 99 F.C.C. 2d 12, 22-26 and 41-45 (Admin. L.J. 1984), aff'd. 99 F.C.C. 2d 1 (Review Bd. 1984) (second degree murder conviction did not disqualify AM applicant in view of mitigating circumstances, passage of time, and evidence of rehabilitation).

9 After ceasing to operate his amateur radio station, Mr. Schoenbohm reapplied, was reexamined, and after a hearing, his applications for station license in the amateur radio service and general class operator license were granted. See Herbert L. Schoenbohm (FCC 02D-01), Initial Decision of Administrative Law Judge Arthur I. Steinberg, released October 11, 2002.



Mr. Mitnick's means of receiving communications during incarceration centered around his grandmother. As the testimony shows, he had reasons for using his grandmother's address while in prison. He could rely on his grandmother to forward mail to him. And since he had limited access to a telephone, the use of his grandmother's phone for receiving messages was a rational alternative. In bottom line terms, the Commission and its staff were not misled, or intended to be misled, by Mr. Mitnick's designation of his grandmother's address and telephone number on his Form 605 renewal application. Therefore, any potentially adverse effect of his disclosure was minimized in its effect.

29. Because the Commission staff was not misled or disadvantaged, the misinformation on Form 605 concerning an address and a telephone number becomes *de minimis*. Certainly, those omissions do not rise anywhere near the disqualifying level of the untruthful testimony in Schoenbohm, *supra*. Here, Mr. Mitnick is not found to be untruthful or misleading, even while discounting any assumption that the staff knew of his prison residency due to his perceived celebrity status.<sup>10</sup> And the Commission holds, as a matter of policy, that there is no value in expending resources in a hearing on insignificant questions. Merrimack Valley Broadcasting, Inc., 55 Radio Reg. 2d (P&F) 23, 25 (1983).

### **Past Conduct**

30. Mr. Mitnick's convictions involve fraud and deception in gaining access to computer systems, and fraud and deception in making telephone calls charged to other persons' accounts. The serious nature of the activities impact negatively on his propensity to obey the law and on his propensity to deal honestly with the Commission. However, this record contains substantial evidence of Mr. Mitnick's rehabilitation.

### **Remorse**

31. Mr. Mitnick acknowledged his criminal activities and made court-ordered restitution. He has expressed remorse and has apologized to several of his victims. He now shares his knowledge of computer "hacking/cracking" with the federal government, local governments, and the private sector. It is concluded that the serious nature and duration of Mr. Mitnick's criminal activities have been mitigated by these rehabilitative factors.

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<sup>10</sup> Press Release dated August 9, 1999, United States Attorney, Central District of California reflecting that Mr. Mitnick was at that time considered to be "the most wanted computer criminal in United States history." See HDO at Para. 4 and n. 7.

### **Passage of Time**

32. There has been passage of a period of time sufficient to measure rehabilitation. His last criminal activity occurred more than seven years ago. This is explained in part by the fact that he spent five years in prison where his opportunity to commit additional crimes was neutralized. Mr. Mitnick was released from prison and was still under supervision at the time of the hearing. He has had time to demonstrate whether he has reformed and the record indicates that he has undergone a transformation for the better.

### **Recent Conduct and Character for Truth**

33. There is reliable evidence that Mr. Mitnick has focused on becoming an honest, productive citizen and that he has the means to continue to do so. He is a computer security consultant asked to testify before the United States Senate. He was asked to consult the Commission on National Security. And he was requested to host a radio talk-show dealing with the Internet. He expects soon to be providing testimony to the Nevada Public Services Commission on telecommunications network security. He has co-authored a book on computer security. Requests for Mr. Mitnick's advice and services, ranging from testimony before fact-finding bodies considering legislation to book writing, are serious endeavors showing that others have confidence in his rehabilitation.

34. Mr. Hall and Ms. Long dealt with Mr. Mitnick on responsible projects. Both have vouched for his ability to deal in an honest and forthright manner. Significantly, Mr. Mitnick's probation officer gave positive testimony regarding rehabilitation and found him to be reliable and amenable to supervision.

35. Mr. Mitnick appeared truthful while testifying at the hearing. He did not equivocate when discussing the nature of his convictions, and he disclosed discomfiting information about his past.

### **Long Term Compliance**

36. The record establishes that Mr. Mitnick has been authorized to operate an amateur station for over twenty-five years. He operated a ham radio without recent incident. There is slight evidence of one alleged incident of interference dating from 1984, which Mr. Mitnick denies. But there is no other evidence that he violated Commission rules. Mr. Mitnick has been using his licensed radio regularly since release from prison and there have been no complaints regarding his post-prison operations. The evidence in its totality shows Mr. Mitnick to have an overall record of compliance with Commission rules.

### ULTIMATE CONCLUSIONS

37. Based on the totality of the evidence, it is concluded that Mr. Mitnick's post-prison conduct and the positive testimony of a probation officer familiar with his criminal past, demonstrate his rehabilitation.

38. The totality of this record supports a conclusion that Mr. Mitnick has the capacity and the motivation to deal honestly with the Commission, and to comply with its rules and regulations. Mr. Mitnick has paid a debt to society, has shown outward manifestations of remorse, and has made restitution. He also has demonstrated having a positive attitude towards society.

39. It is significant that the Enforcement Bureau, after participating in the hearing, joins in Mr. Mitnick's request for license renewals.

40. It is concluded that Kevin David Mitnick has been sufficiently rehabilitated to show that he now possesses the requisite character for the renewal of his licenses in the amateur radio service.

### RULINGS

Accordingly, IT IS ORDERED that the Application of Kevin David Mitnick for Renewal of License of Station NGNHG in the Amateur Radio Service, and the Application of Kevin David Mitnick for renewal of Amateur Radio General Class Operator License (File No. 00000-58498), ARE GRANTED.<sup>11</sup>

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel  
Chief Administrative Law Judge

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<sup>11</sup> This Initial Decision will become effective and this proceeding terminated 50 days after its public release if exceptions are not filed within 30 days after its release and if the Commission does not review this ruling on its own motion. 47 C.F.R. §1.276 (d).