

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

In the Matter of)
)
ROGER WAHL) MB Docket No. 21-401
)
WQZS(FM), Meyersdale, PA) Facility ID No. 57424
)

HEARING DESIGNATION ORDER, ORDER TO SHOW CAUSE, AND NOTICE OF OPPORTUNITY FOR HEARING

Adopted: October 19, 2021

Released: October 19, 2021

By the Chief, Media Bureau:

I. INTRODUCTION

1. This Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing commences a hearing proceeding to determine whether Roger Wahl (Wahl), licensee of Station WQZS(FM), Meyersdale, Pennsylvania (Station), is qualified to be and to remain a holder of Federal Communications Commission (FCC or Commission) authorizations, and as a consequence thereof, whether his license for the Station should be revoked.

2. As discussed more fully below, Wahl was recently convicted of a felony and multiple misdemeanors under the Pennsylvania Crimes Code. Those convictions raise the question under the Commission’s Character Qualifications Policy Statement whether he possesses the requisite character qualifications to remain a Commission licensee. Accordingly, we are designating the case to be tried as a written proceeding under the Commission’s rules for hearing proceedings, with the Administrative Law Judge serving as the presiding officer in the case.

1 The Chief, Media Bureau (Bureau), pursuant to delegated authority, issues this Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing pursuant to sections 312(a)(2), and 312(c) of the Communications Act of 1934, as amended (Act), sections 1.91 and 1.221 of the Commission’s rules (Rules). See 47 U.S.C. §§ 312(a)(2) and 312(c); 47 CFR §§ 1.91, 1.221, 0.61 and 0.283. There is a pending application for consent to assignment of license for the Station. See FCC File No. BALH-20200305AAH. That application will be held in abeyance pending the outcome of this proceeding.

2 18 Pa. C.S. §§ 101-9546. See infra paras. 3-4.

3 Because this proceeding pertains to the potential revocation of a “station license,” the Commission’s Part 1, subpart B hearing rules apply. 47 CFR § 1.91(d). Consistent with the Bureau’s past practice, we designate an ALJ to serve as the presiding officer. See, e.g., Auburn Network, Inc., Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, 35 FCC Rcd 1282 (MB 2021). The new written hearing procedures, described infra at para. 11, became effective on Nov. 5, 2020. See Procedural Streamlining of Administrative Hearings, Report and Order, 35 FCC Rcd 10729 (2020) (Written Hearings Report and Order); 85 Fed. Reg. 63166 (Oct. 6, 2020).

II. BACKGROUND

3. On July 8, 2020, Wahl pleaded guilty to criminal use of a communication facility, which is a third-degree felony,⁴ and four related misdemeanors.⁵ Specifically, Wahl pleaded guilty to second-degree misdemeanors of recklessly endangering another person, unlawful dissemination of an intimate image, and tampering with evidence.⁶ He also initially pleaded guilty to invasion of privacy.⁷

4. The facts supporting Wahl's guilty plea were recited for the court at the time his plea was entered, and Wahl himself confirmed that the recitation was accurate.⁸ Wahl had secretly taken nude photos of a woman inside her home using a concealed camera installed in her bathroom; (b) impersonated the woman on an online dating site; (c) sent the nude photos of the woman to at least one man whom he connected with through that site; and (d) solicited that man to have sexual relationships with the woman without her consent.⁹ In addition, Wahl deleted the nude photos of the woman from his mobile phone, and deleted the communications he made via the online dating site upon learning of the Pennsylvania State Police investigation.¹⁰

5. Subsequently, according to the record in the criminal proceeding, Wahl learned that a conviction on the invasion of privacy charge would require registration and notification as a sex offender.¹¹ Thus, he withdrew his plea of guilty with respect to that charge, and on November 16, 2020, instead pleaded guilty to identity theft, a first-degree misdemeanor.¹² At that time, Wahl was sentenced to concurrent sentences that effectively placed him on probation for three years, with four months of electronic monitoring, and required him to pay \$600 in fines and the costs of his prosecution and supervision.¹³

6. **Legal Standards.** Section 312(a)(2) of the Act provides that the Commission may revoke any license if "conditions com[e] to the attention of the Commission which would warrant it in refusing to grant a license or permit on the original application."¹⁴ The character of an applicant is among

⁴ See *Commonwealth of Pa. v. Wahl*, No. 56-CR-0000952-2019 (Ct. of C.P., Somerset C'ty, Pa. July 8, 2020) (Initial Order of the Court). The police report from 2019 described this charge as use of a communication device to facilitate the commission of a felony or attempted felony. See Pa. State Police GO# PA 2019-1197584 at 29 (Wahl Police Report). In their investigation, the police obtained screen shots of the dating profile and photos, *id.* at 10-11 and 14, and seized Wahl's phone after finding the nude photos in the deleted photos file of the phone. *Id.* at 15-16.

⁵ See Initial Order of the Court.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *Commonwealth of Pa. v. Wahl*, Motion to Withdraw Guilty Plea, No. 56-CR-0000952-2019 (Ct. of C.P., Somerset C'ty, Pa. July 27, 2020); *Commonwealth of Pa. v. Wahl*, Order, No. 56-CR-0000952-2019 (Ct. of C.P., Somerset C'ty, Pa. Nov. 16, 2020) (accepting withdrawal of guilty plea).

¹² See *id.*

¹³ See *Commonwealth of Pa. v. Wahl*, Sentence of Court, No. 56-CR-0000952-2019 (Ct. of C.P., Somerset C'ty, Pa. Nov. 16, 2020). In imposing the sentence, the court observed that the victim of Wahl's criminal activity was not physically assaulted. At the same time, it stated: "We do note that the Defendant indeed maintains a minimal prior record; however, he has caused the victim in this case substantial emotional harm. The seriousness of the offenses, the multiple actions, and the extent to which the Defendant went to perpetrate harm on the victim warrants a lengthy period of supervision. Any lesser sentence in our view would depreciate the seriousness of the offenses." *Id.* at 4.

¹⁴ 47 U.S.C. § 312(a)(2).

those factors that the Commission considers in determining whether an applicant has the requisite qualifications to be a Commission licensee.¹⁵ A character defect that would warrant the Commission's refusal to grant a license in the original application therefore would likewise support a Commission determination to revoke a license.

7. Under the Commission's *Character Qualifications Policy Statement*, non-FCC misconduct may call into question a licensee's character.¹⁶ In assessing character qualifications in broadcasting matters, the Commission considers, as relevant, "evidence of any conviction for misconduct constituting a felony."¹⁷ In particular, we have 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 conform to provisions of both the Act and the Commission's Rules and policies.¹⁸ The Commission retains discretion to consider other types of non-FCC misconduct that may be relevant, including certain types of misdemeanors.¹⁹ The question of whether misconduct is disqualifying turns on the facts of each case, including a consideration of any mitigating circumstances.²⁰

III. DISCUSSION

8. Wahl's guilty plea to criminal use of a communication facility, a third-degree felony, by itself, raises the question under the Commission's *Character Qualifications Policy Statement* whether he possesses the requisite character qualifications to remain a Commission licensee. Reliability is a key element of character necessary to operate a broadcast station in the public interest.²¹ The propensity to comply with the law generally is relevant to character qualifications, and an applicant or licensee's willingness to violate other laws, and, in particular, to commit felonies, is indicative of whether the applicant or licensee will conform to the Commission's rules or policies.²² Evidence of any felony conviction is relevant to an applicant's or licensee's character.²³

9. We also find that Wahl's multiple misdemeanor convictions support our decision to designate this matter for hearing. While felony convictions, among all criminal convictions, are most relevant to our evaluation of an applicant's character, the Commission has the discretion to consider serious misdemeanor convictions in appropriate cases.²⁴ We find that this is such a case. Although Wahl does not have a record of multiple criminal convictions over time, he pleaded guilty not only to a felony,

¹⁵ See *Policy Regarding Character Qualifications In Broad. Licensing*, Report, Order, and Policy Statement, 102 F.C.C.2d 1179 (*January 1986 Policy Statement*), recon. dismissed/denied, 1 FCC Rcd 421 (*November 1986 Policy Statement*). See also *Policy Regarding Character Qualifications in Broad. Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (*1990 Policy Statement*), modified, Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991) (*1991 Policy Statement*), further modified, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992) (collectively, *Character Qualifications Policy Statement*).

¹⁶ The term "non-FCC misconduct" refers to misconduct other than a violation of the Commission's rules or the Communications Act. *1986 Character Policy Statement*, 102 F.C.C.2d at 1183 n.11, para. 7.

¹⁷ See *1990 Policy Statement*, 5 FCC Rcd at 3252, para. 4.

¹⁸ *Id.*

¹⁹ *1990 Policy Statement*, 5 FCC Rcd at 3252, and 3254, n.3; *1991 Policy Statement*, 6 FCC Rcd at 3448.

²⁰ *1990 Policy Statement*, 5 FCC Rcd at 3252, para. 5 ("While conviction for a felony raises questions of whether an applicant or licensee has the requisite propensity to obey the law, we continue to believe that there are mitigating factors that must be taken into consideration in our deliberations."); *January 1986 Policy Statement*, 102 F.C.C.2d at 1227-29, paras. 102-106 (discussion of mitigating factors).

²¹ *January 1986 Policy Statement*, 102 F.C.C.2d at 1209-20, paras. 55-57.

²² *1990 Policy Statement*, 5 FCC Rcd at 3252, para. 3.

²³ *Id.* at 3252, para. 4.

²⁴ *1990 Policy Statement*, 5 FCC Rcd at 3252, and 3254, n.3; *1991 Policy Statement*, 6 FCC Rcd at 3448.

but also to an array of misdemeanor criminal offenses (identity theft, unlawful dissemination of an intimate image, recklessly endangering another person, and tampering with evidence) based on misconduct involving multiple actions over a period of time designed to harm his victim seriously and then evade responsibility for those actions.²⁵ Even though Wahl's attempt to inflict physical harm on the victim failed, he did inflict substantial emotional harm.²⁶ Furthermore, the fundamental purpose of the Commission's character inquiry is to make predictive judgments about an applicant's truthfulness and propensity to comply with the Act and the Rules.²⁷ For this reason, we find that Wahl's misdemeanor convictions directly implicate his character qualifications.

10. We are unable to conclude on the record before us that Wahl's criminal convictions are not disqualifying. Because those convictions raise the question under the Commission's *Character Qualifications Policy Statement* whether he possesses the requisite character qualifications to remain a Commission licensee, we designate for hearing his character qualifications to be a Commission licensee and whether his license should be revoked.

IV. PROCEDURES FOR HEARING

11. *Written Hearings Report and Order.* The Commission recently supplemented its formal hearing processes applicable to the revocation of Title III licenses by adopting Rules that, *inter alia*, expand the use of a hearing procedure that relies in appropriate cases on written submissions and documentary evidence.²⁸ These hearing proceedings shall be resolved on a written record consisting of affirmative case, responsive case, and reply case submissions, along with all associated evidence in the record, including stipulations and agreements of the parties and official notice of material facts. Based on that record, the presiding officer will issue an Initial Decision pursuant to section 409(a) of the Act and sections 1.267 and 1.274(c) of the Rules.²⁹ The Bureau finds that this is an appropriate case for use of those procedures because the criminal proceeding is a final adjudication and the court record from the proceeding contains an explanation of the factual underpinnings for Wahl's guilty pleas.³⁰

12. *Notice of Appearance.* Should Wahl wish to avail himself of the opportunity to be heard, he (or his attorney) must file a written appearance pursuant to section 1.91(c) of the Rules.³¹ The written appearance must be filed within 20 days of the mailing of this *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing*, and must state, among other things, that Wahl will present evidence on the matters specified in this order.

13. *Initial Case Order.* After release of this *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing*, the presiding officer shall promptly release an Initial Case

²⁵ See *Williamsburg Cnty. Broad. Corp.*, Order to Show Cause and Order Requiring Consolidation, 5 FCC Rcd 3034, 3035, para. 13 (1990) (drug trafficking felony is directly relevant to FCC character qualifications analysis because it shows a callous disregard for the welfare of fellow citizens), license revoked in *South Carolina Radio Fellowship*, Memorandum Opinion and Order, 6 FCC Rcd 4823 (1991).

²⁶ See *supra* note 13.

²⁷ *January 1986 Policy Statement*, 102 F.C.C.2d at 1189, 1232 paras. 21, 114; see also *id.* at 1210, para. 60 (“[T]he trait of truthfulness is one of the two key elements of character necessary to operate a broadcast station in the public interest.”); *id.* at 1211, para. 61 (“The integrity of the Commission's processes cannot be maintained without honest dealing . . . by licensees.”); *1990 Policy Statement*, 5 FCC Rcd at 3252, paras. 3-4 (willingness to violate other laws bears on propensity to comply with Communications Act and Commission rules).

²⁸ See note 3 *supra*.

²⁹ 47 U.S.C. § 409(a); 47 CFR §§ 1.267, 1.274(c). That Initial Decision will be subject to review by the Commission pursuant to 47 CFR §§ 1.276-1.277 under the circumstances described therein.

³⁰ See *Auburn Network, Inc.*, *supra*, 35 FCC Rcd at 1288.

³¹ 47 CFR § 1.221(c).

Order. The Initial Case Order shall put all parties on notice that they are expected to be fully cognizant of Part I of the Rules concerning Practice and Procedure, 47 CFR Part 1, Subparts A and B. The Initial Case Order shall also set a date for the initial status conference and a date by which each party should file a pre-conference submission that would include (a) whether discovery is expected in this case, and if so, a proposed discovery schedule; (b) any preliminary motions they are intending to file; and (c) a proposed case schedule. The parties' pre-conference submissions should also indicate whether they request that a Protective Order be entered in this case.

14. *Initial Status Conference and Initial Status Conference Order.* The presiding officer shall set the case schedule, including any deadlines by which the parties should submit the motions they identified in their pre-conference submissions.³² The presiding officer shall also set the deadlines for the parties' affirmative case, responsive case, and reply case submissions in accordance with sections 1.371-1.375 of the Rules.³³ If the parties have requested the entrance of a Protective Order, the presiding officer shall also set a deadline by which a joint proposed Protective Order shall be submitted for consideration. In accordance with section 1.248(b) of the Rules,³⁴ the presiding officer may adopt the case schedule during the status conference or in an order following the conference.

15. Additional status conferences may be scheduled throughout the course of the proceeding at the request of the parties and/or at the discretion of the presiding officer. Any request by a party for a status conference must be made in writing to the presiding officer and shall be copied on all other parties.

16. *Transcripts.* In accordance with section 1.248 of the Rules, an official transcript of all case conferences shall be made, unless the parties and the presiding officer agree to forego a transcript.³⁵ Transcripts shall be made available to the public as part of the official record in the Commission's Electronic Comment Filing System (ECFS) in MB Docket No. 21-401.

17. *Requests for Admissions.* In accordance with section 1.246 of the Rules, any party may serve upon any other party written requests for the admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact.³⁶ Such requests shall be served within twenty (20) days after the deadline for filing a notice of appearance unless the presiding officer sets a different time frame.³⁷

18. *Available Discovery Methods.* Sections 1.311 through 1.325 of the Rules set forth procedures that may be used for the discovery of relevant facts and/or for the production and preservation of evidence for use in the hearing proceeding.³⁸ These sections of the Rules provide, *inter alia*, for the taking of depositions, for interrogatories, and for the production of documents and things.³⁹

19. *Evidentiary Rules.* In the *Written Hearings Report and Order*, the Commission amended section 1.351 of the Rules to adopt the evidentiary standard set forth in the formal APA hearing

³² Section 1.294 of the Rules shall determine the deadlines for oppositions (and replies, if permitted) for most interlocutory motions submitted to the presiding officer. *See id.* § 1.294. The filing deadlines for oppositions (and replies, if permitted) to motions to enlarge, change, or delete issues made pursuant to section 1.229 of the Commission's rules and motions to intervene made pursuant to section 1.223 of the Rules, for example, shall be at the discretion of the presiding officer.

³³ *See id.* §§ 1.371-1.375.

³⁴ *See id.* § 1.248(b).

³⁵ *See id.* § 1.248.

³⁶ *See id.* § 1.246.

³⁷ *See id.*

³⁸ *See id.* §§ 1.311.

³⁹ *See, e.g., id.* §§ 1.315, 1.323, and 1.325.

requirements. In relevant part, section 1.351 of the Rules now states, “any oral or documentary evidence may be adduced, but the presiding officer shall exclude irrelevant, immaterial, or unduly repetitious evidence.”⁴⁰ The parties remain free to make evidentiary arguments based on the Federal Rules of Evidence.

20. *Petitions to Intervene.* Any person or entity seeking status as a party in interest in this proceeding must file a petition to intervene in accordance with section 1.223(a) of the Rules.⁴¹ Any person or entity seeking to participate in this proceeding as a party may file a petition for leave to intervene in accordance with section 1.223(b) of the Rules.⁴²

21. *Motions to Enlarge, Change or Delete Issues.* Motions to enlarge, change, or delete issues to be considered in this proceeding shall be allowed, consistent with section 1.229 of the Rules.⁴³

22. *Restricted Proceeding.* This hearing proceeding is a “restricted” proceeding pursuant to section 1.1208 of the Rules and thus *ex parte* presentations to or from Commission decision-making personnel, including the presiding officer and her staff and staff of the Commission’s Media Bureau, are prohibited, except as otherwise provided in the Rules.⁴⁴

23. *Electronic Filing of Documents.* All pleadings in this proceeding, including written submissions such as letters, discovery requests and objections and written responses thereto, excluding confidential and/or other protected material, must be filed in MB Docket No. 21-401 using ECFS.⁴⁵ ECFS shall also act as the repository for records of actions taken in this proceeding, excluding confidential and/or other protected material, by the presiding officer and the Commission. Documents responsive to any party’s requests for production of documents should not be filed on ECFS. Such responsive documents shall be served directly on counsel for the party requesting the documents and produced either in hard copy or in electronic form (*e.g.*, hard drive, thumb drive) with files named in such a way as it is clear how the documents are organized.

24. *Case Caption.* The caption of any pleading filed in this proceeding, as well as all letters, documents, or other written submissions including discovery requests and objections and responses thereto, shall indicate whether it is to be acted upon by the Commission or the presiding officer.⁴⁶ The presiding officer shall be identified by name.

25. *Service.* Electronic service on the Enforcement Bureau shall be made using the following email address: EBHearings@fcc.gov.

26. *Confidential and/or Otherwise Protected Materials.* To the extent any party to this proceeding wishes to submit materials or information that it would like withheld from the public record, it may do so in accordance with the procedures set forth in section 1.314 of the Rules.⁴⁷ The parties may also enter into a Protective Order. As stated above, requests for a Protective Order should be made in the parties’ pre-conference submission in accordance with the schedule set forth in the Initial Case Order.

⁴⁰ See *id.* § 1.351.

⁴¹ See *id.* § 1.223(a).

⁴² See *id.* § 1.223(b).

⁴³ See *id.* § 1.229.

⁴⁴ See *id.* § 1.1208 (“Proceedings in which *ex parte* presentations are prohibited, referred to as ‘restricted’ proceedings, include . . . all proceedings that have been designated for hearing . . .”). See also *id.* §§ 1.1202(b) (describing what constitutes an *ex parte* presentation), 1.1204 (exceptions).

⁴⁵ See *id.* § 1.51.

⁴⁶ See 47 CFR § 1.209.

⁴⁷ See *id.* § 1.314.

27. *Initial Decision.* The presiding officer shall issue an Initial Decision on the issues set forth herein, as well as any other issues designated for hearing in the course of the proceeding. This Initial Decision shall contain, at a minimum, findings of fact and conclusions of law, as well as the reasons or basis therefor, and the appropriate rule or order or policy and the sanction, relief or denial thereof, as appropriate.⁴⁸

V. ORDERING CLAUSES

28. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 312(a)(2) and 312(c) of the Communications Act of 1934, as amended,⁴⁹ and section 1.91(a) of the Commission's Rules,⁵⁰ and pursuant to authority delegated under section 0.283 of the Commission's Rules,⁵¹ the captioned authorization IS DESIGNATED FOR HEARING in a consolidated proceeding before the FCC Administrative Law Judge, at a time and place to be specified in a subsequent order, upon the following issues:

(a) To determine the effects, if any, of Roger Wahl's felony conviction and related misdemeanor convictions on his qualifications to be a Commission licensee.

(b) To determine whether Roger Wahl has the qualifications to be a Commission licensee.

(c) To determine whether Roger Wahl's license for Station WQZS(FM) should be revoked.

29. IT IS FURTHER ORDERED that, pursuant to section 312(c) of the Communications Act of 1934, as amended, and section 1.91(c) of the Commission's Rules,⁵² in order to avail himself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Roger Wahl, in person or by his attorneys, SHALL FILE within 20 days of the mailing of this *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing*, a written appearance stating his intention to appear at the hearing and present evidence on the issues specified above.

30. IT IS FURTHER ORDERED, pursuant to sections 1.91 and 1.92 of the Commission's Rules,⁵³ that if Roger Wahl fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the right to a hearing shall be deemed waived. Where a hearing is waived, the Administrative Law Judge shall issue an order terminating the hearing proceeding and certifying the case to the Commission.

31. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, IS MADE A PARTY to this proceeding without the need to file a written appearance.

32. IT IS FURTHER ORDERED, that, in accordance with section 312(d) of the Communications Act of 1934, as amended, and section 1.91(d) of the Commission's Rules,⁵⁴ the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issues at paragraph 28 SHALL BE upon the Commission's Enforcement Bureau.

33. IT IS FURTHER ORDERED that a copy of each document filed in this proceeding

⁴⁸ See *id.* §§ 1.267, 1.274(c). The Initial Decision shall be subject to Commission review as set forth *id.* §§ 1.276-277.

⁴⁹ 47 U.S.C. §§ 312(a)(2), 312(c).

⁵⁰ 47 CFR § 1.91(a).

⁵¹ See 47 CFR §§ 0.61, 0.283.

⁵² *Id.* § 312(c); 47 CFR § 1.91(c).

⁵³ 47 CFR §§ 1.91, 1.92.

⁵⁴ 47 U.S.C. § 312(d); 47 CFR § 1.91(d).

subsequent to the date of adoption of this *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing* SHALL BE SERVED on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy SHALL BE ADDRESSED to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554.

34. IT IS FURTHER ORDERED that a copy of this *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing* shall be sent via Certified Mail, Return Receipt Requested, and by regular first-class mail to Roger Wahl, 128 Hunsrick Road, Meyersdale, PA 57424.

35. IT IS FURTHER ORDERED that the Secretary of the Commission shall cause to have this *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing*, or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau