

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

In the Matter of)	
)	
ARM & RAGE, LLC)	MB Docket No. 22-122
)	
WJBE(AM), Powell, TN)	Facility ID No. 59693

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

Adopted: March 21, 2022

Released: March 21, 2022

By the Chief, Media Bureau:

I. INTRODUCTION

1. This *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing* commences a proceeding to determine whether the license of Arm & Rage, LLC (A&R) for WJBE(AM), Powell, Tennessee should be revoked pursuant to sections 312(a) and (c) of the Communications Act of 1934, as amended (Act), following the felony conviction of its sole member, Joseph Armstrong (Armstrong).¹ As discussed more fully below, Armstrong has been convicted of fraud and false statements under 26 U.S.C. section 7206(1) for filing a false federal income tax return.² The conviction raises the question under the Commission's *Character Qualifications Policy Statement*³ of whether Armstrong, and hence A&R, possesses the requisite character qualifications to remain a licensee of the Federal Communications Commission (FCC or Commission). Accordingly, the Chief, Media

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) and 312(c) of the Act and 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. A&R has a pending application for license renewal that we will hold in abeyance pending the outcome of the hearing. See Application File No. 0000108293 (rec. Mar. 18, 2020) (Renewal Application). If the underlying license is revoked, the Renewal Application will be dismissed as moot. If the license is not revoked, we would need to determine whether the Renewal Application, which also discloses rule violations concerning filing of Biennial Ownership Reports and of issues/programs lists but requests a waiver of those requirements, should be granted, denied, or granted subject to appropriate terms and conditions, as described in section 309(k)(2) of the Act. 47 U.S.C. § 309(k)(2). See Renewal Application, Attach. (Online Public Inspection File Exhibit); 47 CFR §§ 73.3526, 73.3615.

² 47 U.S.C. § 7206(1).

³ See generally *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*).

Bureau (Bureau) is 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.⁴

II. BACKGROUND

2. **Court Verdict.** On August 8, 2016, a jury convicted Armstrong of one felony count of fraud and false statements under 26 U.S.C. section 7206(1) for filing a false federal income tax return.⁵ The record of the criminal trial reflects that the jury heard evidence that Armstrong, an elected representative in the Tennessee legislature, purchased cigarette tax stamps in 2007 and sold them at a profit of approximately \$330,000 following the legislature's increase in the state's cigarette tax, but did not include the profit on his federal 2008 individual income tax return.⁶ On January 25, 2017, Armstrong was sentenced to three years of probation, which included six months of house arrest, ordered to pay \$99,943 in restitution to the federal government and a \$40,000 fine, and required to perform 300 hours of community service.

3. **Commission Filings.** Pursuant to section 1.65(c) of the Rules, A&R was required to report the conviction as an adverse finding by April 1, 2017, *i.e.*, the anniversary of license renewal filings for Tennessee.⁷ A&R submitted a document informing the Commission of the conviction on April 14, 2017, after the due date.⁸ A&R, on March 18, 2020, also attached the same Adverse Finding Report to a timely Renewal Application to explain its answer of "No" to the question as to whether A&R could certify that there had been no adverse findings bearing on the character qualifications of A&R and its principal.⁹ We note that A&R also responded "No" to the Renewal Application's question of whether it had timely uploaded required documents to its online public inspection file.¹⁰ Specifically, A&R acknowledged that it had neither filed Biennial Ownership Reports as required by section 73.3615 of the Rules nor timely uploaded issues/programs lists as required by section 73.3526 of the Rules.¹¹

⁴ 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). Written hearing procedures, described *infra* at para. 7, 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).

⁵ *See United States v. Joseph E. Armstrong*, No. 3:15-cr-00091-TWP-CCS-001 (U.S. District Ct. E.D. TN 2017) (*Armstrong Proceeding*).

⁶ *See United States' Sentencing Memo, Armstrong Proceeding* (Nov. 30, 2016) at 2, 6; Memorandum and Order, *Armstrong Proceeding* (Phillips, J. Oct. 12, 2016) at 1, 4.

⁷ 47 CFR § 1.65(c) (requiring licensees to report adverse court and administrative findings of conduct that would have a bearing on character qualifications).

⁸ *See WJBE(AM)*—Letter from James L. Winston, Esq. to Marlene H. Dortch, FCC, Report Pursuant to Section 1.65 (Apr. 14, 2017) (*Adverse Finding Report*).

⁹ Renewal Application, Attach. (WJBE - Adverse Findings Exhibit). Among the relevant factors identified in the renewal certification are two applicable to the instant matter—whether there has been a felony conviction or fraudulent statements to another government unit.

¹⁰ *See Renewal Application*, Attach. (Online Public Inspection File Exhibit).

¹¹ *Id.* In an exhibit to the Renewal Application, A&R notes that it had no ownership changes to report, it had maintained issues/programs lists in paper format at its studio, and has since filed and uploaded the required information to its online public inspection file. *Id.* at 1. In that same exhibit, A&R requests waivers of the rules it would otherwise be considered to have violated, stating that these were inadvertent oversights by a station operated with very little staff. *Id.*

4. **Legal Standards.** Section 312 of the Act sets forth specific circumstances in which the Commission may revoke a station license.¹² One such circumstance is a matter “coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application.”¹³ The character of an applicant is among the important public interest factors that the Commission considers in determining whether an applicant has the requisite qualifications to become and/or remain a Commission licensee.¹⁴ The central question in any character inquiry is whether the applicant or licensee “is likely to be forthright in its dealings with the Commission and to operate its station consistent with the requirements of the Communications Act and the Commission's Rules and policies.”¹⁵ Any violation of the Communication’s Act or Commission rules potentially bears on character qualifications.¹⁶ Under the Commission’s *Character Qualifications Policy Statement*, non-FCC misconduct also may call into question a licensee’s character.¹⁷ In assessing character qualifications in broadcasting matters, the Commission considers, as relevant, “evidence of any conviction for misconduct constituting a felony.”¹⁸ 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.¹⁹ Also relevant to the Commission are any adjudicated “fraudulent representations to another governmental unit” because there may be a sufficient nexus between fraud before another agency and an applicant’s propensity to engage in similar behavior in its dealings with the Commission.²⁰ Non-FCC actions involving truthfulness and criminal behavior, thus, may have a bearing on character qualifications. The question of whether misconduct is disqualifying turns on the facts of each case, including a consideration of any mitigating

¹² 47 U.S.C. § 312(a).

¹³ *Id.* § 312(a)(2).

¹⁴ *E.g., Terry Keith Hammond*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 21 FCC Rcd 10267, 10272, para. 13 (2006) (applicant’s felony conviction and untruthful statements among grounds for designating license renewal application for hearing). *See also* 47 U.S.C. §§ 308 (requirements for license can include character), 309 (public interest a factor in considering applications).

¹⁵ *See Character Policy Statement*, 102 F.C.C.2d at 1209, para. 55 (stating that the character inquiry centers on “whether the licensee will in the future be likely to be forthright in its dealings with the Commission and to operate its station consistent with the requirements of the Communications Act and the Commission's Rules and policies,” violations of which “have a potential bearing on character qualifications”).

¹⁶ *Id.* at 1209-10, paras. 56-57.

¹⁷ The term “non-FCC misconduct” refers to misconduct other than a violation of the Rules or the Act. *January 1986 Policy Statement*, 102 F.C.C.2d at 1183 n.11, para. 7. The Commission and the courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.” *See Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000). Reliability is a key, necessary element to operating a broadcast station in the public interest. *See 1986 Policy Statement*, 102 F.C.C.2d at 1195, para. 35. An applicant or licensee’s propensity to comply with the law generally is relevant because a willingness to be less than truthful with other government agencies, to violate other laws, and, in particular, to commit felonies, is potentially indicative of whether the applicant or licensee will in the future conform to the Commission’s rules or policies. *See 1990 Policy Statement*, 5 FCC Rcd at 3252, para. 3.

¹⁸ *See id.* at para. 4.

¹⁹ *Id.*

²⁰ *January 1986 Policy Statement*, 102 F.C.C.2d at 1196, para. 36. In establishing this policy, the Commission specifically referenced the significance of misconduct before other federal agencies, including the Internal Revenue Service. *Id.* at 1194, para. 32.

circumstances.²¹ The purpose of the hearing is not to retry the facts which led to Armstrong's felony conviction but, rather, to consider the impact of that adjudicated misconduct and A&R's admitted rule violations on Armstrong's and, by extension A&R's, character qualifications when viewed along with any mitigating factors.²²

III. DISCUSSION

5. We find that Armstrong's felony conviction raises the question under the Commission's *Character Qualifications Policy Statement* whether he, and thus A&R, has the character qualifications to remain a Commission licensee. The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing."²³ Full and clear disclosure of all material facts is essential to the efficient administration of the Commission's licensing process, and proper analysis of broadcast applications is critically dependent on the accuracy and completeness of information and data that only the applicant can provide. Misrepresentation and lack of candor raise serious concerns as to the likelihood that the Commission can rely on an applicant, permittee, or licensee to be truthful.²⁴

6. The felony of which Armstrong was convicted—fraud and false statements—is centered upon criminally dishonest conduct. Armstrong directed that dishonesty at a federal agency by making false statements on a federal tax form. His omission of material financial information (a large profit), resulted in substantial inaccuracy of information that he was federally required to report (total income on which tax liability is based). In light of Armstrong's past willingness to conceal information from another federal agency in violation of the law, we are unable to conclude on the record before us that Armstrong's criminal convictions are not disqualifying. In addition, A&R's late reporting of Armstrong's conviction to the Commission, along with its self-reported and purportedly inadvertent failure to file ownership reports and to upload issues/programs lists between 2018 and 2020, when considered along with the felony, heighten our concern as to whether we can rely upon A&R to provide complete and accurate information to the Commission. Because Armstrong's conviction, separately, and together with A&R's admitted rule violations, raises questions under the Commission's *Character Qualifications Policy Statement*, we designate for hearing appropriate issues to determine whether Armstrong, and by extension, A&R, possess the requisite character qualifications to remain a Commission licensee and whether the Commission should revoke the license for WJBE(AM).

IV. PROCEDURES FOR HEARING

7. *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.²⁵ 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

²¹ *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).

²² *See id.*

²³ *Contemporary Media Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (citation omitted).

²⁴ *See January 1986 Character Policy Statement*, 102 FCC 2d at 1209-11. The fundamental importance of truthfulness and candor on the part of applicants and licensees in their dealings with the Commission is well established. *See FCC v. WOKO, Inc.*, 329 U.S. 223 (1946); *Nick J. Chaconas*, Decision, 28 FCC 2d 231 (1971); *Lebanon Valley Radio, Inc.*, Decision, 35 FCC 2d 243 (Rev. Bd. 1972).

²⁵ *See note 4 supra.*

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.²⁶ 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 the verdict finding Armstrong guilty.²⁷

8. *Notice of Appearance.* Parties to this matter who wish to avail themselves of the opportunity to participate in the hearing proceeding must file a written appearance pursuant to section 1.91(c) of the Rules.²⁸ 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 they will present evidence on the matters specified in this order, and, if required, appear before a presiding officer at a time and place to be determined (which shall be no earlier than thirty days after receipt of this order).²⁹

9. *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 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.

10. *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.³⁰ 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.³¹ 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,³² the presiding officer may adopt the case schedule during the status conference or in an order following the conference.

11. 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.

²⁶ 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 §§ 1.276-277 under the circumstances described therein.

²⁷ See *Auburn Network, Inc.*, Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, 35 FCC Rcd 1282, 1288, para. 16 (MB 2021).

²⁸ 47 CFR § 1.91(c).

²⁹ *Id.*

³⁰ 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 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.

³¹ See *id.* §§ 1.371-1.375.

³² See *id.* § 1.248(b).

12. *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.³³ 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. 22-122.

13. *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.³⁴ 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.³⁵

14. *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.³⁶ These sections of the Rules provide, *inter alia*, for the taking of depositions, for interrogatories, and for the production of documents and things.³⁷

15. *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 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."³⁸ The parties remain free to make evidentiary arguments based on the Federal Rules of Evidence.

16. *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.³⁹ 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.⁴⁰

17. *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.⁴¹

18. *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.⁴²

19. *Electronic Filing of Documents.* All written submissions such as motions, letters, discovery requests and objections and written responses thereto, excluding confidential and/or other

³³ See *id.* § 1.248.

³⁴ See *id.* § 1.246.

³⁵ See *id.*

³⁶ See *id.* §§ 1.311-1.325.

³⁷ See, e.g., *id.* §§ 1.315, 1.323, and 1.325.

³⁸ *Id.* § 1.351.

³⁹ See *id.* § 1.223(a).

⁴⁰ See *id.* § 1.223(b).

⁴¹ See *id.* § 1.229.

⁴² 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).

protected material, must be filed in MB Docket No. 22-122 using ECFS.⁴³ 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.

20. *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.⁴⁴ The presiding officer shall be identified by name.

21. *Service.* All documents submitted in this proceeding must also be served on all other parties in accordance with section 1.211 of the Commission's Rules and shall be accompanied by a proof of service. Service on the Enforcement Bureau shall be made using the following email address: EBHearings@fcc.gov.

22. *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.⁴⁵ 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.

23. *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.⁴⁶

V. ORDERING CLAUSES

24. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 312(a) and 312(c) of the Communications Act of 1934, as amended,⁴⁷ and section 1.91(a) of the Commission's Rules,⁴⁸ and pursuant to authority delegated under sections 0.61 and 0.283 of the Commission's Rules,⁴⁹ Arm & Rage, LLC IS HEREBY ORDERED TO SHOW CAUSE why its authorization for WJBE(AM), Powell, Tennessee SHOULD NOT BE REVOKED in a 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 Joseph Armstrong's felony conviction on his qualifications and thus the qualifications of Arm & Rage, LLC to be a Commission licensee;

(b) To determine the effects, if any, of Arm & Rage, LLC's failure to report the

⁴³ See *id.* § 1.51.

⁴⁴ See *id.* § 1.209.

⁴⁵ See *id.* § 1.314.

⁴⁶ See *id.* §§ 1.267, 1.274(c). The Initial Decision shall be subject to Commission review as set forth *id.* at 1.276-277.

⁴⁷ 47 U.S.C. §§ 312(a)(2), 312(c).

⁴⁸ 47 CFR § 1.91(a).

⁴⁹ See 47 CFR §§ 0.61, 0.283.

conviction by the April 1, 2017 due date, to upload required information to an online public inspection file, and to file timely ownership reports on its qualifications to be a Commission licensee; and

(c) To determine whether, pursuant to section 312 of the Communications Act of 1934, as amended, the license of Arm & Rage, LLC for WJBE(AM), Powell, Tennessee should be revoked.

25. IT IS FURTHER ORDERED that, pursuant to section 312(c) of the Communications Act of 1934, as amended, section 1.91(c) of the Commission's Rules,⁵⁰ in order to avail itself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Arm & Rage, LLC and/or Joseph Armstrong, in person or by an attorney, 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 its intention to appear at the hearing and present evidence on the issues specified above.

26. IT IS FURTHER ORDERED, pursuant to section 1.92(a) and (c) of the Commission's Rules,⁵¹ that if Arm & Rage, LLC and/or Joseph Armstrong 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 dismiss without prejudice, or 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.

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

28. 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,⁵² the burden of proceeding with the introduction of evidence and the burden of proof SHALL BE upon the Commission's Enforcement Bureau.

29. IT IS FURTHER ORDERED that a copy of each document filed in this proceeding 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. Electronic service on the Enforcement Bureau shall be made using the following email address: EBHearings@fcc.gov.

30. IT IS FURTHER ORDERED that copies 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 Arm & Rage, LLC and Joseph Armstrong, 2340 Martin Luther King Ave., Knoxville, TN 37914 and James L. Winston, Esq., Rubin, Winston, Diercks, Harris & Cooke, LLP, P.O. Box 20036, Suite 700, Washington, DC 20036.

⁵⁰ See *id.* § 1.91 (c).

⁵¹ See 47 CFR §§ 1.92(a) and (c).

⁵² See 47 U.S.C. § 312(d); 47 CFR § 1.91(d).

31. 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

Holly Saurer
Chief, Media Bureau