

**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

REVOCATION ORDER

Issued: April 12, 2023

Released: April 12, 2023

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. Pursuant to section 312 of the Communications Act of 1934, as amended, and section 0.111(a)(18) of the Commission’s rules, we hereby revoke the license of Mr. Roger Wahl (Mr. Wahl) for FM Station WQZS in Meyersdale, Pennsylvania.¹ This action follows an Order by Administrative Law Judge Jane Hinckley Halprin (ALJ) terminating a hearing into Mr. Wahl’s qualifications to be a licensee and certifying the case to the Commission after Mr. Wahl waived his right to a hearing by failing to respond to discovery requests and failing to comply with other procedural obligations.²

2. We find that Mr. Wahl lacks the qualifications to be or remain a Commission licensee. The record in this proceeding—particularly Mr. Wahl’s 2020 convictions for a felony and four misdemeanors, and the facts underlying those convictions—establishes that he lacks the requisite character to be a Commission licensee as described in the Commission’s *Character Qualifications Policy Statement*.³

II. BACKGROUND

A. Factual Background

3. On July 8, 2020, Mr. Wahl pleaded guilty to five crimes.⁴ The facts supporting Mr. Wahl’s guilty plea were recited for the court at the time his plea was entered, and Mr. Wahl confirmed that the recitation was accurate.⁵ Specifically, Mr. Wahl admitted that he: (a) secretly took nude photos

¹ See 47 U.S.C. § 312(a)(2); 47 CFR § 0.111(a)(18) (delegating to the Enforcement Bureau authority to “[i]ssue ... appropriate orders after a hearing proceeding has been terminated by the presiding officer on the basis of waiver”). Also implicated is a pending application for consent to assignment of license for Station WQZS(FM), Meyersdale, Pennsylvania. See FCC File No. BALH-20200305AAH. That application will be dismissed as moot once the revocation of the WQZS license becomes a final order.

² See *Roger Wahl*, Order Terminating Proceeding, MB Docket No. 21-401 (Halprin, ALJ, Aug. 2, 2022) (Final Termination Order); 47 CFR § 1.92(a), (c), (d).

³ 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*); *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*).

⁴ See *Commonwealth of Pa. v. Wahl*, No. 56-CR-0000952-2019 (Ct. of C.P., Somerset C’nty, Pa. July 8, 2020) (Initial Order of the Court).

⁵ See *Commonwealth of Pa. v. Wahl*, Sentence of Court, No. 56-CR-0000952-2019 (Ct. of C.P., Somerset C’nty, Pa. Nov. 16, 2020).

of a woman inside her home using a concealed camera he 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, posing as the woman, connected with through that site; and (d) posing as the woman, solicited the man to have sexual relations with her.⁶ In addition, upon learning of the Pennsylvania State Police investigation, Mr. Wahl deleted the nude photos from his mobile phone and deleted the communications he made via the online dating site.⁷

4. Mr. Wahl pleaded guilty to criminal use of a communication facility, which is a third-degree felony,⁸ and four related misdemeanors.⁹ Specifically, Mr. Wahl pleaded guilty to second degree misdemeanors for recklessly endangering another person, unlawful dissemination of an intimate image, and tampering with evidence.¹⁰ He also initially pleaded guilty to invasion of privacy.¹¹ On November 16, 2020, Mr. 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.¹²

5. On October 19, 2021, the Commission's Media Bureau released an Order to Show Cause to commence a hearing proceeding before the ALJ to determine whether Mr. Wahl's license should be revoked.¹³ The events that precipitated termination of that hearing are detailed in the Final Termination Order, and we briefly recount them here. Mr. Wahl, who is not an attorney, chose to represent himself in this hearing rather than retain counsel.¹⁴ For that reason, the ALJ repeatedly excused procedural deficiencies and took pains to explain to Mr. Wahl his responsibility to respond fully to the Enforcement Bureau's discovery requests and to orders issued by the ALJ.¹⁵ Even so, problems with Mr. Wahl's self-representation began immediately, as he failed to file his Notice of Appearance in the Commission's Electronic Comment Filing System (ECFS), as specified in the Order to Show Cause, and did not

⁶ *See id.* In their investigation, the police obtained screen shots of the dating profile and photos, *id.* at 10-11 and 14, and seized Mr. Wahl's phone after finding the nude photos in the deleted photos file of the phone. *Id.* at 15-16.

⁷ *See id.*

⁸ *See* 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).

⁹ *See* Initial Order of the Court.

¹⁰ *See id.*

¹¹ *See id.* Subsequently, according to the record in the criminal proceeding, Mr. Wahl learned that a conviction on the invasion of privacy charge would require registration and notification as a sex offender. He then withdrew his plea of guilty with respect to that charge, and instead pleaded guilty to identity theft, a first-degree misdemeanor. *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 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 Mr. 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.

¹³ *Roger Wahl*, Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing, MB Docket No. 21-401, DA 21-1305 (MB Oct. 19, 2021) (Order to Show Cause).

¹⁴ Final Termination Order at 1-2, para. 3.

¹⁵ *See id.*

properly serve the ALJ, as required by the Commission's rules.¹⁶ The ALJ informed Mr. Wahl several times that failure to comply with filing requirements could cause him to lose his license.¹⁷ Nevertheless, these problems continued, as Mr. Wahl repeatedly failed to comply with his obligations in the hearing proceeding over the next six months.¹⁸

6. In light of Mr. Wahl's failure to comply with the ALJ's orders and his discovery obligations, the Enforcement Bureau, on May 31, 2022, asked the ALJ to either dismiss this hearing proceeding or compel a response to then-outstanding discovery requests.¹⁹ At the outset of the hearing proceeding, Mr. Wahl had indicated in his Notice of Appearance that "I, Roger Wahl, appear in the above referenced matter and intend to present evidence on the matters specified in the said order."²⁰ Finding he had not lived up to that commitment, however, the ALJ determined Mr. Wahl was not participating in the proceeding at the level necessary to render it a meaningful exercise of the opportunity for a hearing that had been afforded him.²¹ The ALJ therefore found that Mr. Wahl had waived his right to a hearing, terminated the hearing proceeding, and certified the case to the Commission for further disposition consistent with her order.²²

B. Legal Background

7. 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 an original application."²³ Section 308(b) of the Act identifies the character of an applicant to be among those factors that the Commission considers in determining whether an applicant has the requisite qualifications to be a Commission licensee.²⁴ Thus, a character defect that would warrant the Commission's refusal to grant a license in the original application would likewise support a Commission determination to revoke a license.

¹⁶ See *id.* See Order to Show Cause at para. 23; 47 CFR § 1.210 (all pleadings in a hearing proceeding are to be filed in ECFS with a courtesy copy contemporaneously provided to the presiding officer).

¹⁷ *Roger Wahl*, Order, MB Docket No. 21-401, 22M-01 (ALJ Jan. 11, 2022) at 1, para. 3 ("Dates and deadlines established throughout this proceeding are not suggestions. While the Commission's rules include procedures for requesting extensions of time if circumstances warrant, a party who does not make such a request and simply ignores a deadline is in significant danger of being held in default"); Transcript of Initial Status Conference, Tr. 7:16-19 (Mar. 8, 2022) ("This case is very formal; that's how these hearings work. And failure to follow the rules could result in dismissal of the case and revocation of your license"); *Roger Wahl*, Order Summarizing Initial Status Conference, MB Docket No. 21-401, 22M-05 (ALJ Mar. 10, 2022) at 2, para. 3 ("Finally, the Presiding Judge emphasized that failure to adhere to the Commission's hearing regulations and procedures, including filing deadlines, could lead to dismissal of this proceeding with prejudice"); *Roger Wahl*, Discovery Order, MB Docket No. 21-401, 22M-12 (ALJ Apr. 29, 2022) at para. 7.

¹⁸ See *id.*; Final Termination Order at 4, para. 7.

¹⁹ Enforcement Bureau's Motion to Dismiss for Failure to Participate and Waiver of Hearing, or, in the Alternative, Motion to Compel a Response to the Enforcement Bureau's Outstanding Discovery Requests, MB Docket No. 21-401 (filed May 31, 2022).

²⁰ *Roger Wahl*, Notice of Appearance, MB Docket No. 21-401 (filed Nov. 11, 2021).

²¹ Final Termination Order at 4, para. 7 (noting that "[t]o date, he has filed no substantive documents in this proceeding").

²² *Id.* at 5-6, paras. 10-12.

²³ 47 U.S.C. § 312(a)(2).

²⁴ *Id.* § 308(b) ("All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station."). See *Character Qualifications Policy Statement*.

8. Reliability is a key element of character necessary to operate a broadcast station in the public interest.²⁵ 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 Commission's rules.²⁶ For this reason, inquiries into a licensee's basic character eligibility are to "focus on the likelihood that a[] [licensee] will deal truthfully with the Commission and comply with the Communications Act and our rules and policies."²⁷

9. Under the Commission's *Character Qualifications Policy Statement*, non-FCC misconduct may call into question a licensee's character.²⁸ In assessing character qualifications in broadcasting matters, the Commission considers, as relevant, "evidence of any conviction for misconduct constituting a felony."²⁹ In particular, 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 conform to provisions of both the Act and the Commission's rules and policies.³⁰ In addition, the Commission retains discretion to consider certain types of misdemeanors to be relevant.³¹ The *Character Qualifications Policy Statement* also affirms that "a specific finding of fraudulent representation to another governmental unit" may cast doubt on a licensee's truthfulness, whether it occurs in the context of a criminal or civil dispute.³² Such fraudulent representation may take the form of a lack of candor "involv[ing] concealment, evasion, and other failures to be fully informative."³³

10. The question of whether misconduct is disqualifying turns on the facts of each case.³⁴ When making determinations in particular cases, the Commission generally considers factors such as "the willfulness of the misconduct, the frequency of the misconduct, the currentness of the misconduct, the seriousness of the misconduct, the nature of the participation (if any) of managers or owners, efforts made to remedy the wrong, overall record of compliance with FCC rules and policies, and rehabilitation."³⁵

III. DISCUSSION

11. On the undisputed record before us, we find that revocation is warranted under section 312(a)(2) of the Act. Mr. Wahl was given the opportunity, pursuant to the Order to Show Cause, to demonstrate that he is qualified to be and remain a Commission licensee, but he waived his right to a hearing by failing to participate.³⁶ If Mr. Wahl's initial license applications were now under review, the Commission would reject them based on failure to satisfy the character requirement of section 308(b).

²⁵ *January 1986 Policy Statement*, 102 F.C.C.2d at 1209-20, paras. 55-57.

²⁶ *See id.* 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).

²⁷ *January 1986 Policy Statement*, 102 F.C.C.2d at 1183, para. 7.

²⁸ The term "non-FCC misconduct" refers to misconduct other than a violation of the Commission's rules or the Communications Act. *January 1986 Policy Statement*, 102 F.C.C.2d at 1183 n.11, para. 7.

²⁹ *See 1990 Policy Statement*, 5 FCC Rcd at 3252, para. 4.

³⁰ *Id.*

³¹ *Id.* at 3252, and 3254, n.3; *1991 Policy Statement*, 6 FCC Rcd at 3448.

³² *January 1986 Policy Statement*, 102 F.C.C.2d at 1195-96, paras. 35-36.

³³ *Id.*

³⁴ *1990 Policy Statement*, 5 FCC Rcd at 3252, para. 5; *January 1986 Policy Statement*, 102 F.C.C.2d at 1227-29, paras. 102-06.

³⁵ *Id.*

³⁶ *See supra* paras. 5-6.

Under section 312(a)(2), Mr. Wahl's station license should thus be revoked because of conditions that would warrant refusal to grant him a license in the first place.³⁷

12. Mr. Wahl's conviction for criminal use of a communication facility, a third-degree felony, by itself merits revocation of his license. Any felony conviction casts doubt on an applicant's or licensee's character.³⁸ 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.³⁹ This conviction, which concerned acts intended to harm—and causing actual harm to—an individual, disqualifies Mr. Wahl as a licensee on the basis of character defect.

13. Mr. Wahl's four misdemeanor convictions form an independent basis for revoking his license. The Commission has the discretion to consider serious misdemeanor convictions in appropriate cases,⁴⁰ and this is such a case. Mr. Wahl pleaded guilty 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. Mr. Wahl then sought to evade responsibility for those actions. We find that these misdemeanor convictions directly implicate his character qualifications. In particular, the facts surrounding his conviction for identity theft show him to be deceitful both because he concealed a camera in the victim's bathroom and because he then impersonated his victim on an online dating site. His conviction for unlawful dissemination of an intimate image also shows him to be untruthful, as he assumed the victim's identity when disseminating her image—and these same deceitful acts formed the basis for his conviction for recklessly endangering another person. Further, his conviction for tampering with evidence by attempting to conceal his earlier misdeeds buttresses the conclusion that he is untruthful and lacks the character to be a licensee.

14. We also find that Mr. Wahl's station license should be revoked because of his attempt to deceive another government agency, as evidenced by his conviction for tampering with evidence. Acts of “concealment, evasion, and other failures to be fully informative” to a governmental unit equate to fraudulent representations.⁴¹ The facts supporting Mr. Wahl's guilty plea state that Mr. Wahl deleted the communications he made via the online dating site upon learning of the Pennsylvania State Police investigation, and he likewise deleted the nude photos of the woman from his mobile phone.⁴² These efforts at concealment and evasion in the face of a government investigation merit revocation of his license.

15. Thus, Mr. Wahl's felony conviction, his misdemeanor convictions, and his fraudulent misconduct before a government agency each establish that his character falls short of the standard described in the *Character Qualifications Policy Statement*—particularly in light of the factors the Commission considers when making such determinations.⁴³ His conduct was adjudicated to be entirely willful, comprising a sequence of acts performed over time and calculated to harm his victim.⁴⁴ The court

³⁷ 47 U.S.C. § 312(a)(2).

³⁸ See *1990 Policy Statement*, 5 FCC Rcd at 3252, para. 4. See generally *Contemp. Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000).

³⁹ See *1990 Policy Statement*, 5 FCC Rcd at 3252, para. 3.

⁴⁰ *Id.* at 3252, and 3254, n.3; *1991 Policy Statement*, 6 FCC Rcd at 3448.

⁴¹ *January 1986 Policy Statement*, 102 F.C.C.2d at 1195-96, paras. 35-36.

⁴² See Initial Order of the Court.

⁴³ See *1990 Policy Statement*, 5 FCC Rcd at 3252, para. 5; *January 1986 Policy Statement*, 102 F.C.C.2d at 1227-29, paras. 102-06.

⁴⁴ 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 the criminal case acknowledged their seriousness of these acts.⁴⁵ And even though Mr. Wahl has typically complied with FCC rules and policies, the record reflects no efforts by Mr. Wahl to remedy these wrongs. As fewer than three years have passed since his convictions, the Commission cannot hold that his character has been rehabilitated. Revocation of Mr. Wahl's license is thus warranted pursuant to section 312(a)(2) of the Act.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED**, pursuant to sections 308 and 312 of the Communications Act, 47 U.S.C. §§ 308, 312, and sections 0.111 and 1.92 of the Commission's rules, 47 CFR §§ 0.111, 1.92, and the *Character Qualifications Policy Statement*,⁴⁶ that the radio station license for WQZS(FM), Meyersdale, Pennsylvania, held by Mr. Wahl is **REVOKED**, effective the fortieth (40th) day after release of this Order, unless Mr. Wahl files a petition for reconsideration or application for review within thirty (30) days of the release of this Order, in which case the effective date will be suspended, pending further order of the Commission.

17. **IT IS FURTHER ORDERED** that the application for consent to assignment of license for radio station WQZS(FM), Meyersdale, Pennsylvania (FCC File No. BALH-20200305AAH) will be dismissed as moot once the revocation of the WQZS(FM) license becomes a final order.

18. **IT IS FURTHER ORDERED** that a copy of this **ORDER OF REVOCATION** shall be sent by certified mail, return receipt requested, to:

Roger Wahl
128 Hunsrick Road
Meyersdale, PA 15552

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

⁴⁵ See *id.* at 4.

⁴⁶ See *supra* note 3.