

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

In the Matter of	)	
	)	
AUBURN NETWORK, INC.	)	MB Docket No. 21-20
	)	
WANI(AM), Opelika, AL	)	Facility ID No. 63796
	)	
WGZZ(FM), Waverly, AL	)	Facility ID No. 15283
	)	
W242AX(FX), Auburn, AL	)	Facility ID No. 146140
	)	
W254AY(FX), Auburn, AL	)	Facility ID No. 138347
	)	
W294AR(FX), Auburn, AL	)	Facility ID No. 14119
	)	
WHBD-LD, Auburn, AL	)	Facility ID No. 185816
	)	
Application for Original Construction Permit	)	File No. BNPFT-20180327ABZ
NEW(FX), Auburn, AL	)	Facility ID No. 201389

**ORDER DENYING MOTION FOR ADDITIONAL PLEADING**

**Issued: February 24, 2022**

**Released: February 24, 2022**

1. On February 11, 2021, the FCC’s Media Bureau released a Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing in the above-captioned mater.<sup>1</sup> The purpose of this hearing proceeding is to determine whether Michael G. Hubbard, the president and 100 percent shareholder of Auburn Network, Inc. (“Auburn Network”), licensee of the above-captioned stations, possesses the requisite qualifications to remain a Commission licensee in light of his felony convictions.<sup>2</sup>

2. According to the final procedural schedule for this hearing proceeding established by the Presiding Judge, February 22, 2022, was the deadline to request oral hearing and to submit a motion for leave to file additional pleadings beyond the parties’ respective Affirmative, Responsive, and Reply Cases.<sup>3</sup> On that date, Auburn Network filed a motion seeking leave to file a surreply, along with its proffered surreply.<sup>4</sup> In support of its motion, Auburn Network contends that a surreply is necessary to enable it to respond to an “entirely new issue” that the Enforcement Bureau raised for the first time in its

<sup>1</sup> *Auburn Network, Inc.*, Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, MB Docket No. 21-20, DA 21-79 (MB Feb. 11, 2021) (*Auburn Network HDO*).

<sup>2</sup> *Auburn Network HDO* at para. 31.

<sup>3</sup> *Auburn Network, Inc.*, Third Discovery Order, MB Docket No. 21-20, FCC 21M-11 (ALJ Aug. 3, 2021).

<sup>4</sup> Auburn Network’s Motion for Leave to File Surreply in Support of its Responsive Case (filed Feb. 22, 2022) (*Auburn Network Motion for Surreply*).

Reply Case.<sup>5</sup> Specifically, Auburn Network refers to the Bureau's argument that the actions for which Mr. Hubbard was convicted are "tantamount to a 'lack of candor' violation before the Commission."<sup>6</sup> It also seeks to present further argument on evidentiary issues.<sup>7</sup> The Enforcement Bureau filed a response opposing Auburn Network's motion for leave to file a surreply, contending that no further pleadings are necessary, and requesting leave to file a response if Auburn Network's surreply is permitted.<sup>8</sup>

3. Considering Auburn Network's motion and the Enforcement Bureau's response, but not the proffered surreply, the Presiding Judge finds no need to permit filing of a surreply or a response thereto. In hearing proceedings conducted on a written record, additional pleadings, i.e., those beyond the Affirmative Case, Responsive Case, and Reply Case, may be filed only at the discretion of the Presiding Judge. Further, the Presiding Judge may limit the scope of any additional pleadings to particular issues.<sup>9</sup> In the context of this proceeding, the Presiding Judge does not agree that the argument asserted by the Enforcement Bureau in its Reply Case rises to the level of presenting an "entirely new issue" or is such that a surreply -- or a response thereto -- is necessary to ensure the parties a full and fair opportunity to present their cases. Nor does the Presiding Judge see a material benefit to allowing further argument on evidentiary matters already addressed in the existing record.

4. The procedural schedule in this proceeding has been extended three times in light of the need to address various disagreements between the parties. Granting a further extension to accommodate the requested discretionary pleadings would not alter the record materially, nor would the benefits of considering those pleadings outweigh the need for efficiency and avoidance of unnecessary delay. In this regard, the Presiding Judge finds instructive section 1.375(b) of the Commission's rules, which provides that the Presiding Judge may require submission of additional information if doing so is deemed appropriate for a "full, fair, and expeditious resolution of the proceeding."<sup>10</sup>

5. Accordingly, **IT IS ORDERED** that Auburn Network's Motion for Leave to File Surreply in Support of its Responsive Case **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin  
Administrative Law Judge

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<sup>5</sup> *Auburn Network Motion for Surreply* at para. 2.

<sup>6</sup> *Id.* (internal citations omitted).

<sup>7</sup> *Id.* at paras. 2-6.

<sup>8</sup> Enforcement Bureau's Response to Deadline Set by *Third Discovery Order*, FCC 21M-11 (filed Feb. 22, 2022).

<sup>9</sup> 47 CFR § 1.375(a).

<sup>10</sup> 47 CFR § 1.375(b).