

**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
)	

DISCOVERY ORDER

Issued: April 29, 2022

Released: April 29, 2022

1. This Order addresses two separate motions filed by the Enforcement Bureau to compel Roger Wahl to respond to discovery requests in this proceeding.

2. Document Request. On March 14, 2022, the Bureau served on Mr. Wahl its First Request for Production of Documents and Things.¹ Consistent with the Commission's rules, the Bureau specified that a response was due within 10 calendar days.² On March 26, in a response to an email sent to him by the Enforcement Bureau after the due date, Mr. Wahl indicated that he had emailed to the Bureau documents that it appears were intended to be responsive to its document request. Mr. Wahl indicated that he received an error message when he tried to upload the documents into the Commission's Electronic Comment Filing System (ECFS).³

3. On March 31, 2022, the Enforcement Bureau filed a motion to compel Mr. Wahl to respond to its document request. The next day, April 1, 2022, the Enforcement Bureau sought leave to correct its motion to account for Mr. Wahl's March 26 email.⁴ The Presiding Judge issued an order accepting that corrected motion on April 5, 2022, and extended the due date for Mr. Wahl to respond to the motion until April 14, 2022.⁵ As documents in a hearing proceeding must be entered into ECFS in order to be considered filed,⁶ that order also directed Mr. Wahl to upload the documents that he had emailed to the Bureau into ECFS no later than April 8, 2022, and to send a new email to the Presiding Judge, her Special Counsel, and the Enforcement Bureau transmitting those materials. To date, Mr. Wahl has not responded to the EB Corrected Motion to Compel Documents, nor has he uploaded the previously-provided documents or emailed them to the Presiding Judge or her Special Counsel as directed.

4. The EB Corrected Motion to Compel Documents submits that even if Mr. Wahl had

¹ Enforcement Bureau's First Request for Production of Documents and Things to Roger Wahl, MB Docket No. 21-401 (filed Mar. 14, 2022).

² 47 CFR § 1.325(a)(2).

³ Enforcement Bureau's Motion for Leave to File Corrected Motion to Compel Roger Wahl's Response to the Enforcement Bureau's First Document Requests, MB Docket No. 21-401 (filed Apr. 1, 2022) (EB Corrected Motion to Compel Documents) at Attachment A, Exhibit B.

⁴ EB Corrected Motion to Compel Documents.

⁵ *Roger Wahl*, Order, MB Docket No. 21-401, FCC 22M-09 (ALJ rel. Apr. 5, 2022) (*April 5 Order*).

⁶ 47 CFR § 1.210.

intended that the emailed materials serve as a response to the document request, they are incomplete. The Bureau asks that Mr. Wahl be compelled to produce a complete response to each of the document requests, and that he number the documents and indicate to which request each document relates. The Bureau also asks that Mr. Wahl be compelled to affirm for each of the Bureau's requests whether responsive documents exist and have been produced.⁷

5. *Interrogatories.* On March 14, 2022, the Enforcement Bureau served interrogatories on Mr. Wahl.⁸ On March 26, Mr. Wahl filed a response in ECFS.⁹ After sending Mr. Wahl a detailed email identifying gaps in his submission and receiving no additional information, the Enforcement Bureau moved to compel Mr. Wahl to provide a more complete answer to its interrogatories on April 4, 2022.¹⁰ As noted in the *April 5 Order*, the due date for responding to a motion to compel answers to interrogatories is seven calendar days after the motion is filed, in this case April 11, 2022.¹¹ Mr. Wahl has not responded to the Bureau's motion to compel.

6. *Discussion.* During the initial status conference in this matter, held on March 8, 2022, the Presiding Judge voiced her concern that Mr. Wahl is not treating this proceeding with appropriate seriousness. She explained that an FCC hearing is a formal proceeding conducted in a manner consistent with Part 1 of the Commission's rules, and participating parties are expected to abide by those rules. No fewer than five times has the Presiding Judge made this clear during the brief lifespan of this proceeding.¹² Further, the Presiding Judge indicated to Mr. Wahl that he may choose to proceed without counsel but that it is his responsibility to educate himself regarding FCC procedures.¹³ Mr. Wahl faces the possibility of revocation of his FCC license, which is the most severe penalty that the Commission imposes on a licensee. Yet when ordered by the Presiding Judge to do something as simple as forward an email that he had already sent, he did nothing. That leads the Presiding Judge to conclude that he is not reading her orders, which are published in ECFS and emailed directly to the address provided by Mr. Wahl.

7. This proceeding will not continue on this trajectory. Cognizant that the Commission's procedures can be confusing for a non-attorney, the Presiding Judge has endeavored to be as clear as possible in informing Mr. Wahl of his obligations. As previously noted, dates and deadlines established throughout the course of this hearing proceeding are not suggestions.¹⁴ Indeed, failure to adhere to the Commission's regulations and procedures, including filing deadlines, could lead to dismissal of this

⁷ EB Corrected Motion to Compel Documents at 2.

⁸ Enforcement Bureau's First Set of Interrogatories to Roger Wahl, MB Docket No. 21-401 (filed Mar. 14, 2022).

⁹ Roger Wahl, Response to Interrogatories, MB Docket No. 21-401 (filed Mar. 28, 2022).

¹⁰ Enforcement Bureau's Motion to Compel Roger Wahl's Complete Response to the Enforcement Bureau's First Set of Interrogatories, MB Docket No. 21-401 (filed Apr. 4, 2022) at 1-2 & Ex. C.

¹¹ *April 5 Order* at n.8 (citing 47 CFR § 1.323(c)).

¹² See *Roger Wahl*, Initial Case Order, MB Docket No. 21-401, 21M-17 (ALJ rel. Dec. 10, 2021) at para. 7 ("all parties are put on notice that they are expected to be fully cognizant of Part 1 of the Commission's rules concerning Practice and Procedure, 47 CFR Part 1, Subparts A and B"); *Roger Wahl*, Order, MB Docket No. 21-401, FCC 22M-01 (ALJ rel. Jan. 11, 2022) at para. 3; *Roger Wahl*, Order Rescheduling Status Conference, MB Docket No. 21-401, FCC 22M-02 (ALJ rel. Jan. 27, 2022) at para. 3; *Roger Wahl*, Transcript of Status Conference, MB Docket No. 21-401 (Mar. 8, 2022) at 7:5-8; *Roger Wahl*, Order Summarizing Initial Status Conference, MB Docket No. 21-401, FCC 22M-05 (ALJ rel. Mar. 10, 2022) at para. 7.

¹³ *Roger Wahl*, Transcript of Status Conference, MB Docket No. 21-401 (Mar. 8, 2022) at 7:11-15.

¹⁴ *Roger Wahl*, Order, MB Docket No. 21-401, FCC 22M-01 (ALJ rel. Jan. 11, 2022) at para. 3.

matter.¹⁵ Mr. Wahl is hereby put on notice that any additional failure to satisfy a deadline or follow an order of the Presiding Judge could provide a basis for dismissal of this proceeding, which, in turn, will lead to revocation of his FCC license. The Presiding Judge will provide Mr. Wahl one more opportunity to comply with the *April 5 Order*. Accordingly, he is directed to immediately take the following actions:

- (1) Mr. Wahl shall upload the documents previously forwarded to the Enforcement Bureau into the ECFS docket of this proceeding, MB Docket No. 21-401, on or before May 6, 2022; and
- (2) Mr. Wahl shall, via email, transmit those documents to the Presiding Judge and Special Counsel John B. Adams on or before May 6, 2022. The Enforcement Bureau is to be copied on that email.

8. In addition, consistent with the Enforcement Bureau's two motions to compel, Mr. Wahl is to provide more complete responses to the Bureau's document request and interrogatories. While there is often some degree of overlap between a request for documents and a request for responses to interrogatories, they are to be answered separately, *i.e.*, Mr. Wahl is to submit two separate filings. With respect to the document request, the Presiding Judge has not seen the documents that Mr. Wahl provided to the Enforcement Bureau and thus is unable to make specific rulings on the merits at this time. But she can provide some procedural directions. First, the response to the document request should be captioned with the name and docket number of the proceeding. It should have a descriptive title, such as, "Response to the Enforcement Bureau's First Request for Production of Documents and Things." Each document to be submitted must be numbered. Then, for each of the 23 requests made by the Enforcement Bureau, Mr. Wahl's filing is to separately answer two questions – (1) Do documents exist that respond to this request? and (2) If so, which documents, identified by number, are responsive? The filing must be signed and dated.

9. Mr. Wahl's separate filing regarding the interrogatories should also identify the name and docket number of the proceeding, and should include a descriptive title, such as, "Response to the Enforcement Bureau's First Set of Interrogatories." He does not have to respond to all 38 interrogatories; rather, the Bureau seeks a more complete answer to 12 questions, specifically Interrogatories 1-3, 5-8, 16, 19-20, and 37-38. The Presiding Judge has seen Mr. Wahl's initial responses, as uploaded to ECFS, and therefore can offer some substantive guidance.

10. Interrogatories 1-3 and 5-8 call for a description of the activities that led to the criminal charges and guilty pleas at the center of this case. It is not sufficient for Mr. Wahl to simply refer to documents without additional explanation, which is how he initially responded. Mr. Wahl is to fully answer each of those questions in his own words and to the best of his ability. With respect to interrogatory 3, which calls for an explanation of the acts that led to the charge of criminal use of a communication facility, Mr. Wahl misinterprets that as a request that he provide the opinion of the police officers involved. Like the other, similar questions, this calls for a description of the activities underlying that charge as understood by Mr. Wahl.

11. Interrogatory 16 asks, "Describe all communications, images, accessed websites, and other materials used in your Criminal Acts, and identify whether any such communications, images, accessed websites, and other materials were at any time saved or accessed on Station phones, computers, and equipment." Mr. Wahl indicated that he did not use station equipment but failed to answer the first

¹⁵ *Roger Wahl*, Order Summarizing Initial Status Conference, MB Docket No. 21-401, FCC 22M-05 (ALJ rel. Mar. 10, 2022) (Order Summarizing Initial Conference) at para. 3.

part of the question. Mr. Wahl is directed to fully respond to the remainder of Interrogatory 16.

12. Interrogatories 19 and 20 ask, respectively, whether Mr. Wahl has ever been convicted of another crime and whether he has ever plead guilty to another crime. Mr. Wahl's response to both questions refers to a traffic citation in 2017. Mr. Wahl is directed to provide additional detail about the nature of this violation and to identify whether he is referring to the same incident in response to both questions.

13. Interrogatories 37 and 38 ask Mr. Wahl to provide names, addresses, and email addresses of individuals or entities from whom he intends to provide affidavits to support his case. Mr. Wahl provided a list of 31 names, but no addresses or email addresses. Mr. Wahl is directed to provide mailing addresses and email addresses for those potential affiants to the best of his ability, and to so state if he is unable to provide addresses and email addresses for each.

14. As Mr. Wahl is operating without counsel, and now that his filing obligations have been further explained, he will be given a significant but reasonable amount of time to provide the additional information required by this order. Mr. Wahl is directed to submit his revised responses to the request for documents and interrogatories on or before May 25, 2022. He is to respond completely, accurately, and in good faith. Further, as required by the Commission's rules, his response to the interrogatories is to be made under oath or affirmation.¹⁶ That is, he must include a signed and dated statement attesting to the veracity of his statements, such as, "I declare under penalty of perjury that the foregoing is true and correct."¹⁷ Mr. Wahl is again reminded that, at the time he files pleadings in ECFS, he is to also serve a copy on the Enforcement Bureau via email and is to email courtesy copies to the Presiding Judge and Special Counsel John B. Adams.¹⁸ Because this is a restricted proceeding under the Commission's *ex parte* rules, service and courtesy copies must be transmitted as attachments to a single email addressed to the Enforcement Bureau, the Presiding Judge, and the Special Counsel.¹⁹

15. Finally, the Presiding Judge takes this opportunity to correct a scheduling error made earlier in this proceeding. On March 10, 2022, the due date for the Enforcement Bureau's Affirmative Case submission in this proceeding was set as October 10, 2022.²⁰ Because that is a federal holiday, the due date for the Affirmative Case submission is moved to October 11, 2022.

16. Accordingly, **IT IS ORDERED** that Roger Wahl, on or before **May 6, 2022, SHALL FILE** the documents referenced herein that were previously forwarded to the Enforcement Bureau in the docket of this proceeding, MB Docket No. 21-401, in the Commission's Electronic Comment Filing System (ECFS).

17. **IT IS FURTHER ORDERED** that Roger Wahl, on or before **May 6, 2022, SHALL SEND** the aforementioned documents to the Presiding Judge, Special Counsel John B. Adams, and the Enforcement Bureau via email.

18. **IT IS FURTHER ORDERED** that Roger Wahl, on or before **May 25, 2022, SHALL**

¹⁶ 47 CFR § 1.323(b).

¹⁷ See 47 CFR § 1.16.

¹⁸ The emails should be sent to Jane.Halprin@fcc.gov, JohnB.Adams@fcc.gov, and EBHearings@fcc.gov.

¹⁹ *Roger Wahl*, Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing, MB Docket No. 21-401, DA 21-1305 (rel. Oct. 19, 2021) at para. 22; see also 47 CFR §§ 1.1202(b) and 1.1208.

²⁰ Order Summarizing Initial Conference at para. 2.

FILE additional information in response to the Enforcement Bureau's First Request for Production of Documents and Things to Roger Wahl, filed March 14, 2022, consistent with the above discussion.

19. **IT IS FURTHER ORDERED** that Roger Wahl, on or before **May 25, 2022**, **SHALL FILE** additional information in response to the Enforcement Bureau's First Set of Interrogatories to Roger Wahl, filed March 14, 2022, consistent with the above discussion.

20. **IT IS FURTHER ORDERED** that the Enforcement Bureau's Corrected Motion to Compel Roger Wahl's Response to the Enforcement Bureau's First Document Requests, filed April 1, 2022, **IS GRANTED** to the extent indicated herein.

21. **IT IS FURTHER ORDERED** that the Enforcement Bureau's Motion to Compel Roger Wahl's Complete Response to the Enforcement Bureau's First Set of Interrogatories, filed April 4, 2022, **IS GRANTED** to the extent indicated herein.

22. **IT IS FURTHER ORDERED** that the due date for the Enforcement Bureau's Affirmative Case submission in this proceeding is **October 11, 2022**.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin
Administrative Law Judge