

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
)

ORDER DENYING PETITION TO INTERVENE

Issued: June 9, 2022

Released: June 9, 2022

1. This Order addresses a Petition to Intervene, Motion for Extension of Issues, and Motion for Summary Decision filed on May 17, 2022, by the American Militia Association (AMA) in the above-captioned proceeding.1 AMA is the licensee of WHYU-LP in Meyersdale, PA, a low-power FM station, and it holds a construction permit for WHYU-FM, a full-power FM station, also in Meyersdale, PA. AMA disputes statements submitted by Roger Wahl that have been incorporated into the record of this proceeding and alleges that Mr. Wahl has engaged in other violations of the Commission’s rules.2 In the event that it is not afforded party status, AMA asks that its filing be treated as comments in this proceeding, consistent with section 1.225 of the Commission’s rules, 47 CFR § 1.225. AMA asks for summary judgement in this case “based on evidence in the records of the FCC that clearly reveals Roger Wahl’s violations of Commission rules and his lack of candor with the Commission.”3 In opposition, the FCC’s Enforcement Bureau contends that Robert Kluver, AMA’s President and signatory to AMA’s petition, does not appear to have personal knowledge of and involvement in the issues designated for hearing, and that AMA has not shown how its participation will assist in the resolution of those issues. The Bureau indicates that it intends to investigate the allegations made by AMA and, if warranted, may ask for enlargement of the issues to be considered in this proceeding, but suggests that this is not an appropriate juncture at which to add parties to this matter.4

2. This hearing proceeding was initiated by the FCC’s Media Bureau based on Mr. Wahl’s pleading guilty to a felony and multiple misdemeanors.5 Those crimes call into question Mr. Wahl’s qualifications to remain a Commission licensee pursuant to the Commission’s character qualifications

1 American Militia Association, Petition to Intervene, Motion for Extension of Issues & Motion for Summary Decision, MB Docket No. 21-401 (filed May 17, 2022) (AMA Petition to Intervene).

2 AMA also notes that Mr. Wahl did not provide public notice of this hearing proceeding. The notice requirements of section 311 of the Communications Act, 47 U.S.C. § 311, and section 73.3594 of the Commission’s rules, 47 CFR § 73.3594, do not apply to revocation proceedings. Accordingly, Mr. Wahl was not required to provide public notice of this hearing.

3 AMA Petition to Intervene at 4.

4 Enforcement Bureau’s Opposition to Motion to Intervene, MB Docket No. 21-401 (filed May 20, 2022) (EB Opposition).

5 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) (Roger Wahl HDO).

policy.<sup>6</sup> Section 1.223 of the Commission's rules, 47 CFR § 1.223, permits interested persons to seek to intervene in a hearing proceeding. Petitions to intervene are to include a description of the person's interest and an explanation of how their participation will assist in the determination of the issues in question, as well as any additional proposed issues.<sup>7</sup> When a petition to intervene is filed later than 30 days after the order designating the hearing is published in the Federal Register, the petition is to include reasons why it wasn't filed on time. Grant of party status is within the discretion of the presiding officer upon a finding of good cause for the delay in filing.<sup>8</sup>

3. The Media Bureau released the *Roger Wahl HDO* on October 19, 2021, and a summary was published in the Federal Register on October 29, 2021.<sup>9</sup> Petitions to intervene were therefore due by November 29, 2021. AMA filed its request almost five months later, arguing that its construction permit for a full-service FM station wasn't granted until February 22, 2022, that the information to which it objects wasn't filed in the proceeding until March 10, 2022, and that it delayed filing because it instead filed a petition to deny Mr. Wahl's renewal application of April 1, 2022. None of these circumstances support grant of a late-filed petition to intervene. AMA's station did not need to be full service for it to seek to intervene, and even if it did, its filing came almost three months after grant of its construction permit. Similarly, AMA has not explained why it waited two months to object to the information put into the public record on March 10. Nor is it persuasive that AMA first decided to seek participation in this proceeding only after it learned that renewal of Mr. Wahl's station would be held in abeyance pending the outcome of this hearing.

4. Even if the petition had been timely filed, however, AMA has not shown how its participation would facilitate resolution of the issue at the center of this case, which is whether Mr. Wahl's criminal activities render him unqualified to remain a Commission licensee. As the Enforcement Bureau correctly states, it does not appear that Mr. Kluver has personal knowledge of or involvement in Mr. Wahl's crimes such that AMA's participation would inform this proceeding. Nor does section 1.225 of the Commission's rules, 47 CFR § 1.225, provide AMA with an independent opportunity to participate. Section 1.225 permits any person to appear and give testimony in a matter, regardless of whether that person has sufficient interest to intervene, but that testimony must be "relevant, material, and competent."<sup>10</sup> AMA's proposed testimony does not appear to be relevant or material to the issues surrounding Mr. Wahl's criminal convictions.

5. AMA claims to have information that contradicts some of Mr. Wahl's submissions in this proceeding. It may be useful to clarify for AMA that Mr. Wahl's March 10 filings, which AMA characterizes as unverified hearsay statements, are part of the record of this proceeding, but that does not necessarily mean that they will be proffered as or admitted into evidence in the hearing. The same holds true for responses to interrogatories and other information submitted as part of discovery. Everything filed in a hearing proceeding remains part of the public record unless it is stricken or withdrawn. For this reason, AMA's petition to intervene, which references its petition to deny renewal of the license for

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<sup>6</sup> See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 F.C.C.2d 1179 (1986) (*1986 Character Policy Statement*), *recon. dismissed/denied*, 1 FCC Rcd 421 (1986); *Policy Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (*1990 Character Policy Statement*), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *further recon. granted in part*, 7 FCC Rcd 6564 (1992). These character policies have been specifically incorporated by reference into the Commission's rules governing broadcasting. 47 CFR § 73.4280.

<sup>7</sup> 47 CFR § 1.223(b).

<sup>8</sup> 47 CFR § 1.223(c).

<sup>9</sup> 86 Fed. Reg. 60038 (Oct. 29, 2021).

<sup>10</sup> 47 CFR § 1.225(b).

WQZS(FM), is part of the public record of this proceeding. But the Initial Decision rendered by the Presiding Judge is to be solely based on arguments and evidence introduced by the parties as part of a formal process, with appropriate opportunity for challenge, rebuttal, and cross-examination.<sup>11</sup> Because the Enforcement Bureau bears the burden of proof in this case, it is the Bureau's prerogative to decide whether to engage further with AMA and, if relevant evidence is adduced, to introduce that evidence as part of its Affirmative Case. As noted, the Enforcement Bureau is amenable to considering the information that AMA has submitted.

6. AMA filed a reply to the Enforcement Bureau's opposition to its petition to intervene on May 20, 2022.<sup>12</sup> Pursuant to section 1.294 of the Commission's rules, 47 CFR § 1.294, replies to oppositions will not be entertained unless specifically authorized. The Presiding Judge will, in part, address AMA's unauthorized reply in two respects. First, in response to the Enforcement Bureau's being open to including AMA's petition to deny renewal of WQZS in the record of this proceeding, AMA submits that "we shall withdraw our motion to intervene subject to such inclusion."<sup>13</sup> As noted above, all documents filed in this proceeding are part of the public record. That means that AMA's petition to intervene, which cites its petition to deny, and the Bureau's opposition, which provides a link to the petition to deny, are already in the public record of this proceeding. Moreover, the petition to deny renewal is publicly available via the FCC's website, in the Licensing and Management System (LMS) database.<sup>14</sup> In light of that, as well as the Enforcement Bureau's willingness to look into the matters raised by AMA, AMA's concerns appear to be satisfied without the need for AMA to participate directly at this point.

7. Second, the Presiding Judge corrects AMA's misunderstanding of the Commission's rules regarding license renewals. AMA submits that, "We find it troubling and concerning that despite the ALJ's statement regarding Roger Wahl's need to meet the deadline required for the filing of the renewal of his license, and that it was a separate matter, the Media Bureau has basically decided contrary to that position to basically hold that renewal application in abeyance on its own."<sup>15</sup> The Media Bureau did not arbitrarily or unreasonably suspend processing of the renewal application. The Communications Act permits grant of an application for renewal of license only upon a finding that "the public interest, convenience, and necessity will be served by the granting of such application."<sup>16</sup> Because Mr. Wahl's fitness to remain a Commission licensee is the subject of this pending revocation hearing, the Media Bureau could not make the required finding. Nor could it deny the renewal application without expending considerable time and taxpayer money to investigate the issues raised by AMA and, if warranted, designate those issues for hearing pursuant to section 309(e) of the Communications Act.<sup>17</sup> Rather than launch an investigation, the Media Bureau is appropriately waiting to see whether this hearing proceeding renders the renewal application moot by determining that Roger Wahl is not qualified to be a Commission licensee and, in turn, revoking his license.

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<sup>11</sup> See 1.370 through 1.377 of the Commission's rules, 47 CFR §§ 1.370 – 1.377.

<sup>12</sup> Reply to Enforcement Bureau's Opposition to Motion to Intervene by the American Militia Association, MB Docket No. 21-401 (filed May 20, 2022) (AMA Reply).

<sup>13</sup> AMA Reply at 4.

<sup>14</sup> See <https://enterpriseefiling.fcc.gov/dataentry/public/tv/pleadingDetails.html?pleadingFileNumber=0000190791>

<sup>15</sup> AMA Reply at 2.

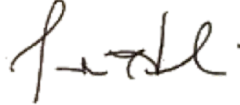
<sup>16</sup> 47 U.S.C. § 309(a).

<sup>17</sup> 47 U.S.C. § 309(e) ("If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing").

8. In sum, AMA has not shown that its intervention will be useful to the resolution of this matter such that it should be permitted to participate as a party or that additional issues should be considered pursuant to section 1.223 of the Commission's rules. Nor has it provided information that would warrant its participation as a non-party pursuant to section 1.225. If, in the course of discovery and prosecution of this hearing proceeding, additional information is uncovered that indicates that AMA should be afforded party status, the Presiding Judge may consider taking that action upon appropriate motion. Because AMA has not been deemed a party to this proceeding, its motions for summary decision and to enlarge the issues are denied, as those actions are only available to those with party status.<sup>18</sup> Further, renewal of the license for WQZS is not at issue in this hearing proceeding, so AMA's motion for summary judgment as it applies to the pending application for renewal cannot be resolved as part of this matter.

9. Accordingly, **IT IS ORDERED** that the Petition to Intervene, Motion for Extension of Issues, and Motion for Summary Decision, filed in the above-captioned matter by the American Militia Association on May 17, 2022, **IS DENIED** for the reasons indicated herein.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin  
Administrative Law Judge

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<sup>18</sup> See 47 CFR § 1.251 (summary decision); 47 CFR § 1.229 (motions to enlarge, change, or delete issues).