

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

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

SECOND DISCOVERY ORDER

Issued: November 22, 2022

Released: November 22, 2022

1. This Second Discovery Order addresses a Motion to Compel filed by Arm & Rage, LLC, in the above-captioned hearing proceeding.¹ The proceeding seeks to determine whether Arm & Rage is qualified to remain a Commission licensee in light of the felony conviction of Joseph Armstrong, its sole member, for filing a false federal income tax return.² The basis for the conviction was that Mr. Armstrong, while a Tennessee state legislator, made a profit on the sale of cigarette tax stamps following the legislature's increase in the state's cigarette tax, but did not include that profit on his federal income tax return.³ The FCC's Media Bureau designated three issues for hearing: (1) the impact of Joseph Armstrong's felony conviction on Arm & Rage's qualifications to hold a broadcast license; (2) the effect of the failure of Arm & Rage to timely report Mr. Armstrong's conviction, to upload required information to the station's public inspection file, and to file timely ownership reports; and (3) whether the license for WJBE(AM) should be revoked.⁴ Discovery in this proceeding is scheduled to end on January 18, 2023.⁵

2. In its Motion to Compel, Arm & Rage requests that the Presiding Judge direct the FCC's Enforcement Bureau to answer six of the eight interrogatories that it posed on October 20, 2022. The Enforcement Bureau opposes the Motion to Compel, arguing that it does not expect to rely on documents or testimony not produced by Arm & Rage and that if that expectation changes, it will supplement its response. The Bureau also contends that some of the interrogatories seek legal conclusions rather than relevant factual information.⁶ The Presiding Judge finds that the Enforcement Bureau's opposition sufficiently clarifies its earlier response to two of the interrogatories such that it has completely answered the questions asked. In particular, Arm & Rage's Interrogatory No. 2 and Interrogatory No. 3 ask the Bureau to identify any documents, testimony, or statements not already produced on which it expects to rely to support the

¹ Arm & Rage's Motion to Compel Responses to its First Set of Interrogatories, MB Docket No. 22-122 (filed Nov. 10, 2022) (A&R Motion to Compel).

² *Arm & Rage, LLC*, Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing, MB Docket No. 22-122, DA 22-285, 2022 WL 1077874 (MB Mar. 21, 2022) (*Arm & Rage HDO*).

³ *Arm & Rage HDO* at para. 2.

⁴ *Id.* at para. 24.

⁵ *Arm & Rage, LLC*, Discovery Order, MB Docket No. 22-122, FCC 22M-27 (ALJ Oct. 20, 2022) (*First Discovery Order*) at para. 11.

⁶ Enforcement Bureau's Opposition to Arm & Rage, LLC's Motion to Compel Responses to its First Set of Interrogatories, MB Docket No. 22-122 (filed November 17, 2022) (EB Opposition) at paras. 3, 6-7.

argument that Mr. Armstrong, and, by extension, Arm & Rage, is not qualified to remain an FCC licensee.⁷ The Enforcement Bureau indicates in its opposition that it “currently has no documents or testimony that were not produced by Arm & Rage and thus it has no information responsive to either Interrogatory Nos. 2 or 3,” and that, “[t]he only documents or testimony the Bureau has were produced by Arm & Rage.”⁸ Accordingly, the Motion to Compel is denied with respect to Interrogatory Nos. 2 and 3.

3. Arm & Rage’s Interrogatory No. 1 asks that the Enforcement Bureau explain with specificity the basis for its contention that Mr. Armstrong, and by extension, Arm & Rage, is unqualified to be a Commission licensee.⁹ The Enforcement Bureau contends that this question improperly asks that it provide a legal conclusion.¹⁰ Section 1.311 of the Commission’s rules, 47 CFR § 1.311, indicates that the Commission’s discovery rules are aimed at the production of relevant facts and evidence. While the requested discovery itself need not be admissible in the hearing, it should be “reasonably calculated to lead to the discovery of admissible evidence.”¹¹ Interrogatory No. 1 in effect asks the Enforcement Bureau to provide a preview of its Affirmative Case. This type of discovery may prove useful in some situations,¹² but in this case, as is the norm in most FCC hearings, the basis for the character qualifications issue has been thoroughly explained in the order designating the case for hearing. Moreover, when a hearing is initiated due to a felony conviction as in this proceeding, the facts, documents, and witnesses are generally going to be defined by the record of the criminal case and related information. As such, requiring the Enforcement Bureau to provide a narrative of its case is not likely to lead to admissible evidence. The Motion to Compel is accordingly denied with respect to Interrogatory No. 1.

4. The remaining questions, Interrogatory Nos. 4, 5, and 6, ask that the Enforcement Bureau identify any specific prejudice caused by the license’s violating Commission rules, respectively, by being late in informing the Commission of Mr. Armstrong’s conviction, by untimely uploading of its Issues/Programs list, and by failing to file biennial ownership reports.¹³ Earlier in this proceeding, Arm & Rage asked for admissions from the Enforcement Bureau regarding its station’s history of FCC compliance, and that the rule violations described in the *Arm & Rage HDO* were nonprejudicial and harmless.¹⁴ The Presiding Judge made clear at that time that she was likely to sustain objections to these types of questions if posed in discovery, stating, “[n]ot only do those requests seek information that may not be immediately available to the trial staff of the Enforcement Bureau, but Arm & Rage generally requests the Enforcement Bureau to stipulate to legal conclusions that can only be borne out by further discovery and argument.”¹⁵ The Enforcement Bureau cites that statement in opposing Arm & Rage’s

⁷ A&R Motion to Compel at para. 4; Arm & Rage’s First Set of Interrogatories to the Enforcement Bureau, MB Docket No. 22-122 (filed Oct. 20, 2022) (A&R First Set of Interrogatories) at Request Nos. 2-3.

⁸ EB Opposition at para. 3.

⁹ A&R Motion to Compel at para. 2; A&R First Set of Interrogatories at Request No. 1.

¹⁰ EB Opposition at paras. 6-7.

¹¹ 47 CFR § 1.311(b).

¹² For instance, Rule 33 of the Federal Rules of Civil Procedure provides that, “[a]n interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.” Fed. R. Civ. P. 33(a)(2). The FCC does not have a parallel discovery rule.

¹³ A&R Motion to Compel at para. 3; A&R First Set of Interrogatories at Request Nos. 4-6.

¹⁴ Arm & Rage’s Request for Admissions to the Enforcement Bureau, MB Docket No. 22-122 (filed May 27, 2022) at Request Nos. 5-7.

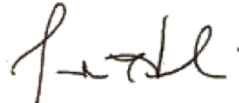
¹⁵ *Arm & Rage, LLC*, Order, MB Docket No. 22-122, FCC 22M-21 (ALJ July 12, 2022) at para. 10.

interrogatories.¹⁶ The Presiding Judge is not persuaded that these interrogatories are likely to lead to the discovery of admissible evidence. In essence, Arm & Rage is asking the Bureau either to concede or make Arm & Rage's case that the violations of Commission rules identified in the *Arm & Rage HDO* were not prejudicial. The Enforcement Bureau's opinion as to the practical effect of the rule violations in question is irrelevant. A licensee that violates Commission rules is subject to sanctions delineated by law without the need for the Commission to demonstrate any specific prejudice. Arm & Rage appears to be trying to make the case that the proposed sanction is out of proportion to the violations. The Presiding Judge will entertain that argument if it is posed in Arm & Rage's Responsive Case, but the Enforcement Bureau's opinion of its merits is not a useful or proper avenue of discovery. The Motion to Compel is accordingly denied with respect to Interrogatory Nos. 4, 5, and 6.

5. Arm & Rage submits that in the event its Motion to Compel is not granted, the Presiding Judge "should at least clarify that the rules are symmetrical," which would mean that it would "be similarly excused from updating its prior responses to the Bureau, and future parties would know they need not answer similar questions."¹⁷ The Presiding Judge isn't certain what Arm & Rage is getting at here, except perhaps to reiterate its argument that the Enforcement Bureau asked for a disproportionate amount of discovery.¹⁸ Arm & Rage notes, for instance, that it responded to the Bureau's interrogatory explaining the basis for its earlier statement that Mr. Armstrong possesses the character to be a Commission licensee.¹⁹ It appears to argue that it should get to seek the same information from the Bureau, i.e., Interrogatory No. 1. It does not follow, however, that the fact that Arm & Rage chose to respond to the Bureau's interrogatory precludes the Bureau from objecting to a similar question, and precludes the Presiding Judge from sustaining that objection.²⁰ As the Enforcement Bureau observes, discovery in Commission hearing proceedings is inherently not "symmetrical."²¹ That is because in any FCC hearing proceeding concerning the actions of a Commission licensee, regardless of which party bears the burden of proof, the licensee is typically the repository of the relevant factual information at the center of the case. As a result, it is not an indication of prejudice that the flow of discovery tends to be one-sided.

6. Accordingly, **IT IS ORDERED** that Arm & Rage's Motion to Compel Responses to its First Set of Interrogatories, filed Nov. 10, 2022, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin
Administrative Law Judge

¹⁶ EB Opposition at paras. 6-7.

¹⁷ A&R Motion to Compel at para. 8.

¹⁸ See Arm & Rage's Response to the Enforcement Bureau's Second Motion to Compel, MB Docket No. 22-122 (filed Oct. 11, 2022).

¹⁹ A&R Motion to Compel at para. 6.

²⁰ While Arm & Rage provided information in response to the interrogatory in question, EB Interrogatory No. 55, it objected that the interrogatory was premature and indicated that it "will explain in its Responsive Case why Mr. Armstrong possesses the requisite character to run a station following full discovery and depending on the arguments of the Enforcement Bureau." Arm & Rage's Objections and Responses to the Enforcement Bureau's Interrogatories, MB Docket No. 22-122 (filed Aug. 9, 2022) at Request No. 55.

²¹ EB Objection at para. 5.