

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

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

ORDER RE MOTION TO COMPEL

Issued: March 13, 2023

Released: March 13, 2023

1. On February 27, 2023, the FCC’s Enforcement Bureau filed a motion in the above-captioned proceeding seeking to compel licensee Arm & Rage, LLC, to provide more complete responses to its second set of document requests and second set of interrogatories, which were both filed on February 7, 2023.1 Arm & Rage filed a response on March 6, 2023.2 The FCC’s Media Bureau designated this matter for hearing to determine whether Arm & Rage, which is controlled by Joseph Armstrong, is qualified to remain a Commission licensee.3 The basis for this revocation hearing, as spelled out by the Media Bureau in the Arm & Rage HDO, is Mr. Armstrong’s 2016 felony conviction for making a false statement on his 2008 federal tax return, as well as the licensee’s violation of certain Commission reporting rules. Discovery in this proceeding closes on March 31, 2023.

2. The information that the Enforcement Bureau asks the Presiding Judge to compel Arm & Rage to produce falls into two general categories. The Enforcement Bureau indicates that one group of requests involves the licensee’s overall compliance with Commission rules and policies, and the second line of inquiry involves Mr. Armstrong’s criminal conduct.4 Specifically, with respect to licensee compliance, the Bureau asks Arm & Rage to describe instances other than those mentioned in the Arm & Rage HDO in which it failed to comply with Commission rules or policies.5 It also requests information about each member of Arm & Rage since it was incorporated, and asks the licensee to explain why Mr. Armstrong was identified as “General Partner” in the application to assign the station to Arm & Rage.6 Further, the Enforcement Bureau references four Annual Reports that Arm & Rage filed with the Tennessee Secretary of

1 Enforcement Bureau’s Motion to Compel Complete Responses to its Second Set of Discovery Requests to Arm & Rage, LLC, MB Docket No. 22-122 (filed Feb. 27, 2023) (EB Motion to Compel); Enforcement Bureau’s Second Set of Requests for the Production of Documents and Things to Arm & Rage, LLC, MB Docket No. 22-122 (filed Feb. 7, 2023); Enforcement Bureau’s Second Set of Interrogatories to Arm & Rage, LLC, MB Docket No. 22-122 (filed Feb. 7, 2023).

2 Arm & Rage’s Response to the Enforcement Bureau’s Third Motion to Compel, MB Docket No. 22-122 (filed March 6, 2023) (Arm & Rage Response).

3 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 March 21, 2022) (Arm & Rage HDO).

4 The Enforcement Bureau’s motion seeks more complete responses to EB Interrogatory Nos. 6, 9, 21, 23, 33-34, 37-38, and 42-45, and EB Document Request Nos. 6, 7, and 16, which are attached to this Order.

5 See Interrogatory No. 6.

6 See Interrogatory Nos. 33-34 and 37-38.

State that variably list the number of members of the LLC as either 2 or 1 and asks that Arm & Rage explain why the number of members changed.⁷ Similarly, the Enforcement Bureau asks the Presiding Judge to compel Arm & Rage to produce documents relating to its incorporation and by-laws, and the annual reports that it has filed with the Tennessee Secretary of State.⁸ With respect to Mr. Armstrong's criminal activity, the Enforcement Bureau requests that the Presiding Judge require Arm & Rage to describe other instances in which Mr. Armstrong may have failed to report income or pay taxes that were due, and seeks production of any liens that may have been assessed against Mr. Armstrong or his property.⁹

3. The Enforcement Bureau submits that the additional discovery it seeks is relevant to the assessment of Mr. Armstrong's character. It contends that, "it is well-established that one of the factors to be considered when evaluating the character of a Commission licensee is the licensee's *overall* record of compliance with the Commission's rules and policies."¹⁰ Although the Presiding Judge in *Auburn Network, Inc.*, foreclosed discovery aimed at character issues beyond the principal's felony convictions, the Enforcement Bureau argues that this case is distinguishable because the *Arm & Rage HDO* specifically raises the licensee's record of non-compliance with Commission rules in addition to Mr. Armstrong's felony conviction as a basis for revocation.¹¹ The Bureau frames this issue as a determination of the extent to which the Bureau is entitled to discovery concerning one of the mitigating factors that the Commission considers as part of its evaluation of a licensee's character. Regarding Mr. Armstrong's felony conviction, the Enforcement Bureau argues that it is entitled to further discovery because Arm & Rage has expressed that "Mr. Armstrong's criminal conduct was an aberration that the judge thought would not be repeated."¹²

4. Arm & Rage counters that the information requested by the Enforcement Bureau is irrelevant and outside the scope of the *Arm & Rage HDO*. It argues that the Bureau proposes "an exception big enough to swallow the rule" that discovery in a hearing case is limited to those issues designated for hearing.¹³ It submits that *Auburn Network, Inc.* is consistent with its position that the issues for discovery are limited to those specified in the underlying hearing designation order, and that the fact that this case, unlike *Auburn Network, Inc.*, delineates issues in addition to Mr. Armstrong's criminal activity does not justify inquiry into other matters. Arm & Rage also notes that the Bureau's Interrogatory No. 6 repeats an earlier interrogatory for which the Bureau chose not to challenge the licensee's objection. It contends that to require a response now ignores the seven-day deadline of the Commission's rules for filing a motion to compel a response to interrogatories.¹⁴ Further, Arm & Rage asserts that the additional information sought regarding Mr. Armstrong's other tax filings is irrelevant to the issues designated and runs counter to the Commission's general policy that only non-FCC misconduct that has been adjudicated is relevant to a character inquiry.¹⁵

5. The *Arm & Rage HDO* presents the following three issues for consideration:

(a) To determine the effects, if any, of Joseph Armstrong's felony conviction

⁷ See Interrogatory Nos. 42-45.

⁸ See Document Request Nos. 6 and 7.

⁹ See Interrogatory Nos. 9, 21, and 23; Document Request No. 16.

¹⁰ EB Motion to Compel at para. 3 (emphasis in original).

¹¹ *Id.* at para. 6 (citing *Auburn Network, Inc.*, Discovery Order, MB Docket No. 21-20, FCC 21M-06, 2021 WL 1945046 (ALJ May 12, 2021)).

¹² *Id.* at para. 8 (quoting Arm & Rage's Objections and Responses to the Enforcement Bureau's Interrogatories, MB Docket No. 22-122 (filed Aug. 9, 2022) at Interrogatory No. 55).

¹³ Arm & Rage Response at para. 15.

¹⁴ *Id.* at paras. 9-11.

¹⁵ *Id.* at paras. 20-23.

on his qualifications and thus the qualifications of Arm & Rage, LLC to be a Commission licensee;

(b) To determine the effects, if any, of Arm & Rage, LLC's failure to report the conviction by the April 1, 2017 due date, to upload required information to an online public inspection file, and to file timely ownership reports on its qualifications to be a Commission licensee; and

(c) To determine whether, pursuant to section 312 of the Communications Act of 1934, as amended, the license of Arm & Rage, LLC for WJBE(AM), Powell, Tennessee should be revoked.¹⁶

The *Arm & Rage HDO* makes clear that, “[t]he purpose of the hearing is not to retry the facts which led to Armstrong’s felony conviction but, rather, to consider the impact of that adjudicated misconduct and A&R’s admitted rule violations on Armstrong’s and, by extension, A&R’s character qualifications when viewed along with any mitigating factors.”¹⁷ The crux of this proceeding, therefore, is assessing whether Mr. Armstrong’s felony conviction and the three specific reporting violations specified in the *Arm & Rage HDO* render him and Arm & Rage unqualified to remain a Commission licensee.

6. The additional discovery sought by the Enforcement Bureau’s Motion to Compel far oversteps that inquiry. The Commission’s rules allow for broad discovery as long as the information “appears reasonably calculated to lead to the discovery of admissible evidence.”¹⁸ The Presiding Judge has heretofore been expansive in granting the Enforcement Bureau’s requests for discovery because she concluded that they were sufficiently tied to the designated issues to potentially lead to admissible information.¹⁹ This most recent motion, on the other hand, appears calculated to expand the scope of this proceeding rather than produce relevant evidence. Mr. Armstrong was convicted of making a false statement on his 2008 personal income tax return, which is a felony. The Commission’s character qualifications policy considers all felonies to be serious crimes and, as such, indicative of a licensee’s character.²⁰ At the same time, the character policy is limited to felonies that have been adjudicated unless the misconduct is “so egregious as to shock the conscience and evoke almost universal disapprobation,” a narrow exception not applicable here.²¹ The Enforcement Bureau submits that it seeks evidence of additional income tax violations to contradict the licensee’s statement that Mr. Armstrong’s felonious behavior was an anomaly. But, pursuant to the character qualifications policy, non-adjudicated allegations of potential non-FCC misconduct are simply not relevant.

7. In addition, the designation order indicates, and Arm & Rage acknowledges, three particular and identifiable violations of the Commission’s rules. The Enforcement Bureau submits that because a licensee’s record before the FCC is a mitigating factor that may be introduced by a licensee facing a character inquiry, “the Commission’s character policies and Commission precedent envision a broader investigation into a licensee’s record of compliance before the Commission.”²² The Presiding Judge does

¹⁶ *Arm & Rage HDO* at para. 24.

¹⁷ *Id.* at para. 4.

¹⁸ 47 CFR § 1.311(b).

¹⁹ See *Arm & Rage*, Discovery Order, MB Docket No. 22-122, FCC 22M-27, 2022 WL 14805549 (ALJ Oct. 20, 2022).

²⁰ *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).

²¹ *1990 Character Policy Statement* at n.5.

²² EB Motion to Compel at para. 5.

not agree. The Commission's character qualifications policy recognizes eight "mitigating factors" to be considered when assessing the effect of a licensee's misconduct on its fitness to hold a Commission license.²³ Seven of the eight factors relate to the specific misconduct in question, while one permits consideration of a licensee's overall record of compliance with Commission rules and policies. These factors are relevant to the analysis of a licensee's propensity to obey the law and can be viewed as akin to an affirmative defense when a licensee's qualifications are challenged.²⁴ They do not, however, operate to expand the issues designated for hearing so as to allow for discovery with respect to any and all heretofore undisclosed potential instances in which the licensee may have violated Commission rules.

8. For the foregoing reasons, the Presiding Judge declines to grant the Enforcement Bureau's request that she compel Arm & Rage to provide more complete responses to its second interrogatories and second document requests, specifically Interrogatory Nos. 6, 9, 21, 23, 33-34, 37-38, and 42-45, and Document Request Nos. 6, 7, and 16. In addition, she takes this opportunity to correct a prior scheduling error. In her order of January 9, 2023, which revised the briefing schedule for this proceeding, she inadvertently afforded Arm & Rage less time to submit its Responsive Case than is indicated in the Commission's rules.²⁵ Section 1.373 of the Commission's rules, 47 CFR § 1.373, provides that a Responsive Case is due within 30 calendar days of the filing of the Affirmative Case unless otherwise specified by the Presiding Officer. As the Presiding Judge did not intend to truncate the filing period, she hereby extends the due dates for the Responsive Case and the Reply Case by two days, and also adjusts the date for filing a motion for an oral hearing and to submit additional pleadings, as set forth below.

9. Accordingly, **IT IS ORDERED** that the Enforcement Bureau's Motion to Compel Complete Responses to its Second Set of Discovery Requests to Arm & Rage, LLC, filed Feb. 27, 2023, **IS DENIED**.

10. **IT IS FURTHER ORDERED** that the schedule for this hearing proceeding is revised as follows:

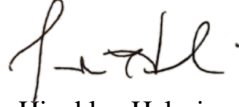
Discovery Ends	March 31, 2023
Enforcement Bureau's Affirmative Case Due	May 15, 2023
Arm & Rage's Responsive Case Due	June 14, 2023
Enforcement Bureau's Reply Case Due	July 12, 2023
Deadline to File Motion to Request Oral Hearing and/or Submit Additional Pleadings	July 26, 2023

²³ The eight mitigating factors are: (1) the willfulness of the misconduct; (2) the frequency of the misconduct; (3) the currentness of the misconduct; (4) the seriousness of the misconduct; (5) the nature of the participation of managers or owners; (6) efforts made to remedy the wrong; (7) overall record of compliance with FCC rules and policies; and (8) rehabilitation. *1990 Character Policy Statement*, 5 FCC Rcd at 3252 (citing *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 F.C.C.2d 1179, 1227-29 (1986) (*1986 Character Policy Statement*), *recon. dismissed/denied*, 1 FCC Rcd 421 (1986)).

²⁴ *Auburn Network, Inc.*, Initial Decision, MB Docket No. 21-20, FCC 22D-01, 2022 WL 1528628 (ALJ May 9, 2022) at para. 31.

²⁵ *Arm & Rage, LLC*, Order Granting Extension of Time, MB Docket No. 22-122, FCC 23M-01, 2023 WL 155309 (ALJ Jan. 9, 2023).

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "J. Halprin", written in a cursive style.

Jane Hinckley Halprin
Administrative Law Judge

Attachment**Discovery Requests Included in the Enforcement Bureau's Motion to Compel**Interrogatories:

6 – One of the factors relevant to determining whether Mr. Armstrong, and by extension, Arm & Rage has the requisite character to hold a Commission license is Arm & Rage's overall record of compliance with the Commission's rules and policies. Other than its failures to timely notify the Commission of Mr.

Armstrong's criminal conviction, its failure to upload its Issues/Program Lists to the Station's online public inspection file, and its failure to file its 2015 and 2017 Biennial Ownership Reports, identify all other instances in which Arm & Rage failed to comply with any Commission rule or policy. For each such instance, provide a detailed explanation as to the circumstances and reasons for the failure, and describe any measures taken to remedy the failure and to avoid similar noncompliance in the future.

9 – Identify any federal tax returns other than his 2008 return on which Mr. Armstrong did not include earned income and/or profits from investments.

21 – State whether Mr. Armstrong has ever failed to pay any taxes to the Internal Revenue Service other than the circumstances that led to his conviction.

23 – State whether Mr. Armstrong has ever had any liens filed against his [sic] him or his property, and if so, provide a detailed explanation of why any such liens were filed, the amount of any such liens, how long the liens were in place, and when they were satisfied.

33 – Identify the name and Contact Information for each member of the licensee since the date of incorporation and their positions with the licensee.

34 – For each member identified in response to Interrogatory No. 33, identify the time period(s) in which they were or have been a member of the licensee, as well as the time period(s) in which they held any positions.

37 – On the application assigning the Station from WMCH Radio, Inc. to Arm & Rage, LLC (Lead File No. BAL-20121220AAA), Mr. Armstrong is identified as "General Partner." Identify the entity for which Mr. Armstrong was the "General Partner" and identify the names and Contact Information for any other partners in that entity.

38 – On Arm & Rage's application for renewal (File No. 0000108293), Mr. Armstrong signed as "Managing Member." Provide a detailed explanation as to why Mr. Armstrong no longer identifies himself as a "General Partner."

42 – The Tennessee Secretary of State indicates that as of the filing of Arm & Rage's 2012 Annual Report, the number of members changed from 1 to 2. Provide a detailed explanation of why the number of members changed and identify the name and Contact Information of each of the members of Arm & Rage as of the filing of its 2012 Annual Report.

43 – The Tennessee Secretary of State indicates that as of the filing of Arm & Rage's 2013 Annual Report, the number of members changed from 2 to 1. Provide a detailed explanation of why the number of members changed and identify the name and Contact Information of each of the members of Arm & Rage as of the filing of its 2013 Annual Report.

44 – The Tennessee Secretary of State indicates that as of the filing of Arm & Rage’s 2014 Annual Report, the number of members changed from 1 to 2. Provide a detailed explanation of why the number of members changed and identify the name and Contact Information of each of the members of Arm & Rage as of the filing of its 2014 Annual Report.

45 – The Tennessee Secretary of State indicates that as of the filing of Arm & Rage’s 2021 Annual Report, the number of members changed from 2 to 1. Provide a detailed explanation of why the number of members changed and identify the name and Contact Information of each of the members of Arm & Rage as of the filing of its 2021 Annual Report.

Document Requests:

6 – All documents referring or relating to Arm & Rage’s incorporation, including but not limited to its initial filing with the Tennessee Secretary of State, articles of incorporation, and by-laws.

7 – Arm & Rage’s annual reports filed with the Tennessee Secretary of State.

16 – All documents referring or relating to any liens filed against Mr. Armstrong or his property, including but not limited to documents referring or relating to why any such liens were filed, the amount of any such liens, how long the liens were in place, and if/when they were satisfied.