

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 IN LIMINE AND/OR
MOTION FOR CLARIFICATION

Issued: March 28, 2023

Released: March 28, 2023

1. On March 20, 2023, the FCC’s Enforcement Bureau filed a motion in the above-captioned proceeding addressing the March 13, 2023, order of the Presiding Judge that denied its motion to compel licensee Arm & Rage, LLC, to provide additional responses to its discovery requests.1 The Enforcement Bureau’s latest motion asks the Presiding Judge to prohibit Arm & Rage from “relying on matters that have been deemed by this Order to be beyond the scope of the HDO and irrelevant to this case in defense of its qualifications to remain a Commission licensee.”2 At issue are statements that Arm & Rage has made during the course of discovery (1) that the felony conviction of Arm & Rage’s sole member, Joseph Armstrong, was “an aberration that the [criminal] judge thought would not be repeated,”3 and (2) that Arm & Rage “has a ‘good record of compliance with the Commission’s rules and policies.’”4 The Enforcement Bureau submits that, consistent with the Presiding Judge’s recent order denying the Bureau’s discovery requests, these two issues raised by Arm & Rage are beyond the scope of this proceeding. In response, Arm & Rage contends that it is entitled to raise issues of Mr. Armstrong’s good character and the licensee’s record as part of its case, consistent with the Commission’s character qualifications policy.5

2. The March 13 Discovery Order considered the Enforcement Bureau’s argument that because Arm & Rage made the statements referenced above, the Bureau was entitled to inquire broadly whether Mr. Armstrong may have committed other crimes such that his felony was not an “aberration,” and whether Arm & Rage may have violated additional Commission rules. For instance, the Bureau asked Arm & Rage to “[i]dentify any tax returns other than his 2008 return on which Mr. Armstrong did not include

1 Enforcement Bureau’s Motion in Limine and/or Motion for Clarification of Order re Motion to Compel, MB Docket No. 22-122 (filed March 20, 2023) (EB Motion in Limine) (referencing Order Re Motion to Compel, MB Docket No. 22-122, FCC 23M-05 (ALJ March 13, 2023) (March 13 Discovery Order)).

2 EB Motion in Limine at para. 1.

3 Enforcement Bureau’s Motion to Compel Complete Responses to its Second Set of Discovery Requests to Arm & Rage, Inc., MB Docket No. 22-122 (filed Feb. 27, 2023) at para. 8 (citing 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).

4 EB Motion in Limine at para. 1 (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. 53).

5 Arm & Rage’s Response to the Enforcement Bureau’s Motion in Limine and/or Motion for Clarification, MB Docket No. 22-122 (filed March 24, 2023).

earned income and/or profits from investments,” and to “[s]tate whether Mr. Armstrong has ever failed to pay any taxes to the Internal Revenue Service other than the circumstances that led to his conviction.”<sup>6</sup> Similarly, the Enforcement Bureau had sought discovery regarding heretofore undiscovered violations of the Commission’s rules by the licensee. For example, it posed an interrogatory to Arm and Rage asking it to “identify all other instances in which Arm & Rage failed to comply with any Commission rule or policy.”<sup>7</sup> The Presiding Judge found that rather than being aimed at yielding admissible evidence, this line of inquiry appeared to be an attempt to expand the scope of issues designated for hearing.<sup>8</sup>

3. The order initiating this hearing designated for consideration whether Mr. Armstrong, and by extension Arm & Rage, remain qualified to hold a Commission license in light of Mr. Armstrong’s felony conviction and certain violations of the Commission’s rules.<sup>9</sup> The Enforcement Bureau contends that if it can’t inquire into other potential misdeeds, then Arm & Rage shouldn’t be able to argue that Mr. Armstrong has otherwise been law-abiding, or that the station has a history of FCC compliance.<sup>10</sup> The Enforcement Bureau’s argument attempts to turn the Commission’s character qualifications policy on its head. Pursuant to that policy, the Commission deems any felony conviction as probative of a licensee’s character. As such, a licensee’s felony conviction provides cause to examine whether that licensee possesses the requisite character to continue to hold a Commission license.<sup>11</sup> To determine whether a particular felony conviction is disqualifying, the character policy allows for “mitigating factors” to be assessed on a case-by-case basis.<sup>12</sup> Among those factors are consideration of the licensee’s overall record of compliance with FCC rules and policies, as well as rehabilitation of the convicted felon. Contrary to the Enforcement Bureau’s apparent argument, the availability of these mitigating factors does not broaden the scope of permissible discovery but instead informs the analysis of the designated issues. The fact that it is acceptable to consider whether Mr. Armstrong has been rehabilitated does not open up discovery as to whether he may have engaged in other, unadjudicated criminal activity, as the Commission’s character policy does not take into consideration alleged or unadjudicated crimes.<sup>13</sup> It would have been acceptable to ask whether Mr. Armstrong had ever been convicted of other felonies, but the Bureau’s inquiry is about matters far outside that.

4. In the same vein, the mitigating factor regarding a licensee’s FCC compliance does not justify discovery that generally asks the licensee to admit any possible rule violations previously unknown to the Commission. The Enforcement Bureau could have justifiably posed a more specific question, such as whether the licensee had ever been the subject of a formal Commission investigation or had been sanctioned by the Commission for violations other than those identified in the *Arm & Rage HDO*, but the Bureau again inquired about matters significantly outside that. It now argues that because

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<sup>6</sup> *March 13 Discovery Order*, Attachment, at Interrogatory Nos. 9 and 21.

<sup>7</sup> *Id.*, Attachment, at Interrogatory No. 6.

<sup>8</sup> *Id.* at para. 6.

<sup>9</sup> *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*) at para. 24. The *Arm & Rage HDO* cited the licensee’s failure to report Mr. Armstrong’s conviction by the April 1, 2017 due date, to upload required information to its online public inspection file, and to file timely ownership reports.

<sup>10</sup> EB Motion in Limine at paras. 2-5.

<sup>11</sup> *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).

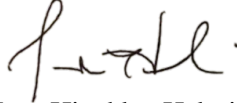
<sup>12</sup> *1990 Character Policy Statement* at 3252 (lists eight mitigating factors: (1) the willfulness of the misconduct; (2) the frequency of the misconduct; (3) the currentness of the misconduct; (4) the seriousness of the misconduct; (5) the nature of the participation of managers or owners; (6) efforts made to remedy the wrong; (7) overall record of compliance with FCC rules and policies; and (8) rehabilitation).

<sup>13</sup> *Id.* at 3252-53.

the Presiding Judge found that its requests were outside the scope of the hearing, Arm & Rage should not be able to rely on its “unsubstantiated statement” that Mr. Armstrong has not committed other crimes or on the “unverifiable allegation” that the licensee has not otherwise violated the Commission’s rules.<sup>14</sup> The Presiding Judge agrees that to the extent that Arm & Rage relies on the mitigating factors, it will be required to provide evidentiary support and, prior to the close of discovery, to provide that evidence to the Bureau if it is not already in the record.<sup>15</sup> It does not follow, however, that discussion of the mitigating factors expands discovery to the exponential degree sought by the Enforcement Bureau.

5. Accordingly, **IT IS ORDERED** that the Enforcement Bureau’s Motion in Limine and/or Motion for Clarification of *Order re Motion to Compel*, filed March 20, 2023, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin  
Administrative Law Judge

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<sup>14</sup> EB Motion in Limine at paras. 2, 3.

<sup>15</sup> *Arm & Rage*, Order, MB Docket No. 22-122, FCC 22M-26 (ALJ Oct. 3, 2022).