



addition, upon learning of the Pennsylvania State Police investigation, Mr. Wahl deleted the nude photos from his mobile phone and deleted the communications he made via the online dating site.<sup>8</sup>

3. Mr. Wahl pleaded guilty to criminal use of a communication facility, a third-degree felony,<sup>9</sup> and four related, second-degree misdemeanors: recklessly endangering another person, unlawful dissemination of an intimate image, tampering with evidence, and identity theft.<sup>10</sup> The elements of his reckless endangerment conviction included “recklessly engag[ing] in conduct which place[d] or may [have placed] another person in danger of death or serious bodily injury.”<sup>11</sup> His conviction for unlawfully disseminating an intimate image involved “disseminat[ing] a visual depiction . . . in a state of nudity” of a woman with the “intent to harass, annoy or alarm” her.<sup>12</sup> His conviction for tampering with evidence established that he, “believing that an official proceeding or investigation [was] pending or about to be instituted. . . alter[ed], destroy[ed], conceal[ed] or remove[d] any record, document or thing with intent to impair its verity or availability in such proceeding or investigation.”<sup>13</sup> Further, in pleading guilty to identity theft, Mr. Wahl affirmed under oath that he “did pretend to be the victim . . . on an Internet dating site and did so without the consent of the victim in furtherance of an unlawful purpose.”<sup>14</sup> On November 16, 2020, the court sentenced Mr. Wahl to probation, electronic monitoring, and a fine for these crimes.<sup>15</sup>

4. On October 19, 2021, the Commission’s Media Bureau released an Order to Show Cause to commence a hearing before the ALJ to determine whether Mr. Wahl’s license should be revoked.<sup>16</sup> Over the course of many months, Mr. Wahl repeatedly failed to comply with his obligations in the hearing proceeding.<sup>17</sup> In light of Mr. Wahl’s failure to comply with the ALJ’s orders and his discovery obligations, the Enforcement Bureau, on May 31, 2022, asked the ALJ either to dismiss the hearing proceeding or compel a response to then-outstanding discovery requests.<sup>18</sup> Finding that Mr. Wahl had not fulfilled his commitment to present evidence on the matters specified in the Order to Show Cause, the ALJ determined that Mr. Wahl was not participating in the proceeding at the level necessary to render it a

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Report at 10-11 and 14, and seized Mr. Wahl’s phone after finding the nude photos in the deleted photos file of the phone. *Id.* at 15-16.

<sup>8</sup> See Wahl Police Report at 15-16.

<sup>9</sup> See Initial Order of the Court, *supra* note 6. The police report from 2019 described this charge as use of a communication device to facilitate the commission of a felony or attempted felony. See Wahl Police Report at 29.

<sup>10</sup> See Initial Order of the Court, *supra* note 6; *Commonwealth of Pa. v. Wahl, Order*, No. 56-CR-0000952-2019 (Ct. of C.P., Somerset C’ty, Pa. Nov. 16, 2020) (Guilty Plea to Identity Theft).

<sup>11</sup> See 18 Pa. Stat. and Cons. Stat. Ann. § 2705 (West).

<sup>12</sup> See *id.* § 3131(a).

<sup>13</sup> See *id.* § 4910.

<sup>14</sup> See Guilty Plea to Identity Theft, *supra* note 10, at 5-7.

<sup>15</sup> See Sentence of Court, *supra* note 6. In imposing the sentence, the court observed that the victim of Mr. Wahl’s criminal activity was not physically assaulted. At the same time, it stated that Mr. Wahl “caused the victim in this case substantial emotional harm. The seriousness of the offenses, the multiple actions, and the extent to which the Defendant went to perpetrate harm on the victim warrants a lengthy period of supervision. Any lesser sentence in our view would depreciate the seriousness of the offenses.” *Id.* at 4.

<sup>16</sup> *Roger Wahl*, Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing, 36 FCC Rcd 14628 (MB 2021) (Order to Show Cause).

<sup>17</sup> See Final Termination Order, *supra* note 4, at 1-5, paras. 3-5, 7-8.

<sup>18</sup> *Roger Wahl*, Enforcement Bureau’s Motion to Dismiss for Failure to Participate and Waiver of Hearing, or, in the Alternative, Motion to Compel a Response to the Enforcement Bureau’s Outstanding Discovery Requests, MB Docket No. 21-401 (filed May 31, 2022).

meaningful exercise of the opportunity for a hearing.<sup>19</sup> The ALJ therefore (1) determined that Mr. Wahl had waived his right to a hearing; (2) terminated the hearing proceeding; and (3) certified the case to the Commission for further disposition consistent with her order.<sup>20</sup>

5. On April 12, 2023, the Enforcement Bureau issued the Revocation Order, revoking Mr. Wahl's license to FM Station WQZS.<sup>21</sup> He filed the instant AFR on May 12, 2023.<sup>22</sup> In it, Mr. Wahl argues that the Enforcement Bureau's decision to revoke his license warrants Commission consideration for the reasons specified in section 1.115(b)(2)(i) and (b)(2)(iv) of the Commission's rules (Rules).<sup>23</sup> He also details his health difficulties, service to the station's local community, and support from members of the community, which he asserts should weigh in his favor.<sup>24</sup>

6. The arguments in the AFR fall into two categories. First, Mr. Wahl argues that he should be given additional opportunity to present his case and rebut the Enforcement Bureau's case by demonstrating Station WQZS(FM)'s meritorious programming and his own public service and reputation for good character in the community.<sup>25</sup> Second, Mr. Wahl argues that his criminal convictions do not merit revocation of the license.<sup>26</sup> He argues that the facts surrounding his convictions "do not neatly compare to those considered disqualifying in other hearing cases," and that they "did not involve fraud, bribery, perjury, or bodily injury."<sup>27</sup> He contends that the offenses in this case are "not indicative of an ongoing propensity for criminal behavior" but reflect "an isolated crime of passion."<sup>28</sup> He also asserts that "there is no evidence of FCC misconduct that has a nexus between [his] criminal behavior and his FCC licenses."<sup>29</sup> He asks that the Revocation Order in this proceeding be vacated and this case remanded to the ALJ.<sup>30</sup>

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<sup>19</sup> Final Termination Order, *supra* note 4, at 4, para. 7 (noting that "[t]o date, he has filed no substantive documents in this proceeding"); *id.* at 6, para. 10 (stating that he had "made no filings in response to outstanding discovery requests, motions, and orders").

<sup>20</sup> *Id.* at 5-6, paras. 10-12.

<sup>21</sup> See Revocation Order, *supra* note 3. Although the ALJ certified the case to the Commission, the Enforcement Bureau was authorized under the Rules to "[i]ssue or draft appropriate orders after a hearing proceeding has been terminated by the presiding officer on the basis of waiver." 47 CFR § 0.111(a)(18); *see also id.* § 0.311(a)(3) (requiring referral to the Commission only of those matters that cannot be resolved under existing precedent).

<sup>22</sup> See AFR, *supra* note 2; 47 CFR § 1.115(d). An unrelated third party filed an Amended Opposition to the AFR. See Amended Opposition to Application for Review of Roger Wahl, WQZS (FM), Proceeding No. MB 21-401 (filed May 25, 2023) (Amended Opposition). The Amended Opposition fails to support any of the facts alleged therein, however, and it greatly exceeds the maximum permissible length for such filings. See 47 CFR § 1.115(f). We therefore strike the filing, giving it no further consideration in this proceeding. Relatedly, we do not consider the Reply that Mr. Wahl filed to the Amended Opposition, which is moot. See Reply to Opposition to Application for Review, Proceeding No. MB 21-401 (filed June 7, 2023).

<sup>23</sup> See 47 CFR § 1.115(b)(2)(i) ("The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy."), (b)(2)(iv) ("An erroneous finding as to an important or material question of fact."). Cf. AFR, *supra* note 2, at 1.

<sup>24</sup> See AFR, *supra* note 2, at 2, 4-9; AFR Supplement, *supra* note 2.

<sup>25</sup> See AFR, *supra* note 2, at 2, 4-10.

<sup>26</sup> See *id.* at 2.

<sup>27</sup> See *id.* at 10.

<sup>28</sup> See *id.* at 9.

<sup>29</sup> See *id.* at 10.

<sup>30</sup> See *id.* at 4.

### III. DISCUSSION

7. As an initial matter, we reject Mr. Wahl's attempts to introduce new evidence concerning his illness, conduct, and reputation.<sup>31</sup> We will not take such evidence into consideration as a basis for overturning the Revocation Order. Section 1.115(c) of the Rules declares that "no application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."<sup>32</sup> The Enforcement Bureau had no opportunity to consider the impact, if any, of the facts alleged in Mr. Wahl's declaration and the writings of others on his behalf as they relate to his qualifications to be a Commission licensee, because they were not presented to the Enforcement Bureau. But even if these materials had been presented to the Enforcement Bureau before it issued the Revocation Order, we still would decline to consider them due to Mr. Wahl's waiver of his right to present such evidence before the ALJ. We further affirm, for the reasons discussed below, the Enforcement Bureau's decision that Mr. Wahl's criminal convictions merit revocation of his license.

#### A. Mr. Wahl, Having Waived His Right to a Hearing, Can No Longer Avail Himself of the Evidentiary Functions of a Hearing.

8. Mr. Wahl states that "[i]f provided with the opportunity to proceed with the presentation of evidence, [he] will be able to provide information concerning his past meritorious service to the community and the station's importance to the community."<sup>33</sup> This argument wrongly assumes that Mr. Wahl retains the right to introduce additional evidence. Because the hearing was terminated by the ALJ, Mr. Wahl may no longer present evidence or rely on other hearing rights.<sup>34</sup>

9. Pursuant to section 312(a)(2) and (c) of the Act<sup>35</sup> and sections 0.283 and 1.91 of the Rules,<sup>36</sup> the Media Bureau designated for hearing before an ALJ whether Mr. Wahl was qualified to remain and would remain a Commission licensee following his criminal convictions.<sup>37</sup> Under section 1.91(d) of the Rules, the Commission, represented by the Enforcement Bureau, bore the burden of proceeding with the introduction of evidence and the burden of proof in that hearing proceeding.<sup>38</sup> Mr. Wahl filed, as required under section 1.91(c) of the Rules, a written appearance stating that he would "present evidence on the matters specified in the" Order to Show Cause.<sup>39</sup> Mr. Wahl, however, failed to preserve his right to present evidence on the matters specified in the Order to Show Cause.<sup>40</sup> Specifically, the ALJ found Mr. Wahl had waived the hearing under section 1.92(a)(2) of the Rules by failing to comply with discovery and other hearing obligations.<sup>41</sup> The ALJ thereafter terminated the hearing

<sup>31</sup> See AFR, *supra* note 2, at 2, 4-9; AFR Supplement, *supra* note 2.

<sup>32</sup> See 47 CFR § 1.115(c).

<sup>33</sup> See AFR, *supra* note 2, at 5.

<sup>34</sup> See, e.g., *Quests, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 5273 (1992) (denying an application for review after a licensee failed to participate in a hearing on an order to show cause). We note also that 47 CFR § 1.44 prohibits commingling requests to different entities (e.g., the Commission, the ALJ, and an entity acting on delegated authority) in a single pleading and authorizes return of such pleadings without consideration.

<sup>35</sup> 47 U.S.C. § 312(a)(2), (c).

<sup>36</sup> 47 CFR §§ 0.283, 1.91(a).

<sup>37</sup> See *id.* §§ 0.61, 0.283.

<sup>38</sup> See *id.* § 1.91(d).

<sup>39</sup> See Final Termination Order, *supra* note 4, at 6, para. 10; 47 CFR § 1.91(c).

<sup>40</sup> See Final Termination Order, *supra* note 4, at 4, para. 7 (noting that Mr. Wahl had "filed no substantive documents in this proceeding"); *id.* at 6, para. 10 (stating that he had "made no filings in response to outstanding discovery requests, motions, and orders").

<sup>41</sup> See *id.* at 4, para. 7; *id.* at 6, para. 10; 47 CFR § 1.92(a)(2).

proceeding, acknowledging that this step would have the effect of “causing a Commission license to be revoked without a full airing of substantive issues.”<sup>42</sup> Mr. Wahl had the right to appeal from that ruling within 30 days but did not do so.<sup>43</sup> After the hearing was terminated and the time for appeal had expired, the Enforcement Bureau, acting on delegated authority, properly considered the issues under section 1.92(d) of the Rules *based on the information available to it* and revoked Mr. Wahl’s license.<sup>44</sup> While Mr. Wahl asserts that his health issues merit reopening the proceeding so he can introduce evidence,<sup>45</sup> he had ample opportunity to request additional time from the ALJ and failed to do so.<sup>46</sup>

10. As Mr. Wahl filed no appeal to the Final Termination Order, he waived his right to appeal the matters resolved in that order, including his opportunity to present evidence in a hearing.<sup>47</sup> To the extent that Mr. Wahl seeks review of the Final Termination Order now, we decline his untimely request.

**B. The Enforcement Bureau Reasonably Concluded that Mr. Wahl’s Criminal Convictions Merited Revoking the License to FM Station WQZS.**

**1. Mr. Wahl’s Conduct is Relevant to His Qualifications as a Licensee.**

11. Mr. Wahl argues that his criminal convictions do not merit revocation of the station license, but we affirm the Enforcement Bureau’s conclusion to the contrary.<sup>48</sup> Certain types of behavior unrelated to the FCC may call into question a licensee’s fitness to maintain a license. This behavior includes, *inter alia*, felony convictions,<sup>49</sup> serious misdemeanor convictions in appropriate or compelling cases,<sup>50</sup> and adjudicated conduct “in which a specific finding of fraudulent representation to another governmental unit is made.”<sup>51</sup>

12. Mr. Wahl’s criminal behavior implicates each of these types of behavior. First, Mr. Wahl pleaded guilty to criminal use of a communication facility, which is a third-degree felony.<sup>52</sup> Although

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<sup>42</sup> See Final Termination Order, *supra* note 4, at 4, para. 7; *id.* at 6, para. 10; 47 CFR § 1.92(a)(2), (c).

<sup>43</sup> See 47 CFR § 1.302(a) (“If the presiding officer’s ruling terminates a hearing proceeding, any party to the proceeding, as a matter of right, may file an appeal from that ruling within 30 days after the ruling is released.”).

<sup>44</sup> See *id.* § 1.92(d) (“The Commission will determine on the basis of all the information available to it from any source, including such further proceedings as may be warranted, if a revocation order and/or a cease and desist order should issue, and if so, will issue such order.”); Revocation Order, *supra* note 3.

<sup>45</sup> See AFR, *supra* note 2, at 4-5.

<sup>46</sup> See Final Termination Order, *supra* note 4, at 4, para. 7 n.25.

<sup>47</sup> See *id.* at 4, para. 7; *id.* at 6, para. 10; 47 CFR §§ 1.92(a), 1.302(a).

<sup>48</sup> Relatedly, Mr. Wahl argues that the Enforcement Bureau failed to make out a prima facie case and to meet its burden of proof that his criminal record establishes his lack of character qualification to hold a license. See AFR, *supra* note 2, at 3, 10. The Enforcement Bureau’s burdens of proceeding and proof, however, apply only within the hearing proceeding, the termination of which Mr. Wahl did not appeal.

<sup>49</sup> See *Policy Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252, 3252 paras. 3-5 (1990) (*1990 Policy Statement*), *modified*, Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991) (*1991 Policy Statement*), *further modified*, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992).

<sup>50</sup> See *1990 Policy Statement*, 5 FCC Rcd at 3252, para. 4 n.3.

<sup>51</sup> *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*, Report, Order and Policy Statement, 102 F.C.C.2d 1180, 1195-96, paras. 35-36 (1986), *recon. dismissed/denied*, 1 FCC Rcd 421 (1986) (*January 1986 Policy Statement*).

<sup>52</sup> See Initial Order of the Court, *supra* note 6.

Mr. Wahl is correct that not every felony is disqualifying,<sup>53</sup> every felony is relevant to our analysis of qualifications to be a licensee.<sup>54</sup> Second, Mr. Wahl pleaded guilty to four second-degree misdemeanors related to his felony conviction and based on actions he deliberately took over a period of time: recklessly endangering another person, unlawful dissemination of an intimate image, tampering with evidence, and identity theft.<sup>55</sup> The mere elements of these crimes, and Mr. Wahl's statement under oath, establish the seriousness of these convictions.<sup>56</sup> Third, his conviction for tampering with evidence establishes *per se* a fraudulent representation to a governmental unit because he sought to conceal information that was relevant to an official criminal investigation,<sup>57</sup> and lack of candor "involv[ing] concealment, evasion, and other failures to be fully informative" is a form of fraudulent representation.<sup>58</sup>

## 2. Mr. Wahl's Conduct Disqualifies Him as a Licensee.

13. Whether misconduct disqualifies a licensee is an individualized determination.<sup>59</sup> Our orders articulate the factors we typically consider in making predictive judgments about future licensee behavior,<sup>60</sup> and we briefly consider Mr. Wahl's conduct in light of each of the following factors.

14. *Willfulness of misconduct.* Mr. Wahl's criminal conduct was a premeditated and deliberate scheme. Moreover, his conviction for tampering with evidence expressly included the "intent to impair" the availability of material in a proceeding or investigation,<sup>61</sup> and his conviction for unlawfully disseminating an intimate image establishes his "intent to harass, annoy or alarm" another person.<sup>62</sup> Mr. Wahl's misconduct was clearly willful.

15. *Frequency of misconduct.* Mr. Wahl did not repeatedly commit all the offenses for which he was convicted, but it is clear that he performed multiple criminal acts over a significant period.<sup>63</sup> In sentencing Mr. Wahl, the court noted "the multiple actions, and the extent to which [Mr. Wahl] went to perpetrate harm on the victim."<sup>64</sup> These actions included creating an online dating profile, disseminating images of his victim, engaging with individuals responding to that profile, and later deleting materials.<sup>65</sup> Although Mr. Wahl alleges that the offenses in this case are "not indicative of an ongoing propensity for

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<sup>53</sup> See AFR, *supra* note 2, at 9.

<sup>54</sup> 1990 Policy Statement, 5 FCC Rcd at 3252, paras. 3-5.

<sup>55</sup> See Initial Order of the Court, *supra* note 6; Guilty Plea to Identity Theft, *supra* note 10.

<sup>56</sup> See *supra* para. 3.

<sup>57</sup> See 18 Pa. Stat. and Cons. Stat. Ann. § 4910 (West).

<sup>58</sup> January 1986 Policy Statement, *supra* note 51, at 1195-96, paras. 35-36.

<sup>59</sup> 1990 Policy Statement, *supra* note 49, at 3252, para. 5; January 1986 Policy Statement, *supra* note 51, at 1227-29, paras. 102-106.

<sup>60</sup> 1990 Policy Statement, *supra* note 49 at 3252, para. 5 (explaining that the Commission generally considers factors such as "the willfulness of the misconduct, the frequency of the misconduct, the currentness of the misconduct, the seriousness of the misconduct, the nature of the participation (if any) of managers or owners, efforts made to remedy the wrong, overall record of compliance with FCC rules and policies, and rehabilitation") (citing January 1986 Policy Statement, *supra* note 51, at 1227-29).

<sup>61</sup> See 18 Pa. Stat. and Cons. Stat. Ann. § 4910 (West).

<sup>62</sup> See *id.* § 3131(a).

<sup>63</sup> See Sentence of Court, *supra* note 6, at 4; Wahl Police Report, *supra* note 7, at 10-16.

<sup>64</sup> See Sentence of Court, *supra* note 6, at 4.

<sup>65</sup> See *id.*; Wahl Police Report, *supra* note 7, at 10-11, 14-16.

criminal behavior” but reflect “an isolated crime of passion,”<sup>66</sup> we find that an extended course of premeditated conduct cannot fairly be characterized as “an isolated crime of passion.”

16. Mr. Wahl relies on a handful of decisions for the proposition that the absence of “repeated behavior” indicates that “retention of a license is appropriate.”<sup>67</sup> The cases he cites, however, do not support this proposition. *Contemporary Media, Titus, Cox*, and *Augusta* all resulted in license revocations.<sup>68</sup> Although Mr. Wahl argues that a different outcome would have obtained in each case absent repeated behavior, the decisions belie his assertion. In *Titus*, the Commission stated that “[e]ven without considering Titus’s two juvenile convictions, we believe Titus’s adult conviction . . . would be sufficient to justify revocation of his license.”<sup>69</sup> Similarly, in *Augusta*, the Commission explained that the “drug conviction is itself sufficient basis for revocation here.”<sup>70</sup> And neither *Contemporary Media* nor *Cox* cites the occurrence of repeated offenses as essential to the outcomes in those decisions.<sup>71</sup>

17. Mr. Wahl also relies on *Richard Richards* and *Auburn Network*, in which the licensees were not disqualified, but those cases are distinguishable from this dispute. In *Richards*, the Review Board granted renewal to an applicant who had been convicted on a single criminal count of possession of marijuana that “did not include preying on others”<sup>72</sup> or other aggravating factors, whereas Mr. Wahl’s convictions include recklessly endangering his victim and tampering with evidence. Finally, in *Auburn Network* (a case still subject to Commission review), the ALJ after a hearing was unpersuaded that frequency of conduct was dispositive concerning the licensee’s qualifications.<sup>73</sup>

18. *Currentness of misconduct.* Police were made aware of Mr. Wahl’s possible criminal activities in September 2019,<sup>74</sup> and he was sentenced on November 16, 2020.<sup>75</sup> We have deemed offenses “current” where the convictions occurred within six years prior<sup>76</sup> and where criminal conduct occurred within the preceding four to five years.<sup>77</sup> By this standard, Mr. Wahl’s misconduct is current.

19. *Seriousness of misconduct.* “[A]ll felonies are serious crimes,”<sup>78</sup> and we find Mr. Wahl’s misdemeanor convictions likewise to reflect serious misconduct.<sup>79</sup> Mr. Wahl asserts that the facts surrounding his convictions “do not neatly compare to those considered disqualifying in other hearing

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<sup>66</sup> See AFR, *supra* note 2, at 9.

<sup>67</sup> See *id.*

<sup>68</sup> See *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000) (*Contemporary Media*); *David Titus*, Decision, 29 FCC Rcd 14066 (2014) (*Titus*); *David Edward Cox*, Order of Revocation, 21 FCC Rcd 14153 (EB 2006) (*Cox*); *Augusta Radio Fellowship*, Memorandum Opinion and Order, 6 FCC Rcd 4823 (1991) (*Augusta*).

<sup>69</sup> See *Titus*, 29 FCC Rcd at 14070, para. 11.

<sup>70</sup> See *Augusta*, 6 FCC Rcd at 4824, para. 7.

<sup>71</sup> See *Contemporary Media*, 214 F.3d at 187-199; *Cox*, 21 FCC Rcd at 14153-56.

<sup>72</sup> See *Richard Richards*, Decision, 10 FCC Rcd 1950 (Rev. Bd. 1995) (*Richards*); see *id.* at 3959, para. 38. In fact, the record in *Richards* did not show any potential or actual harm to a third party due to the licensee’s criminal activity.

<sup>73</sup> See *Auburn Network, Inc.*, Initial Decision, 2022 WL 1528628, at \*13, FCC 22D-01 (ALJ 2022) (*Auburn Network*).

<sup>74</sup> See Wahl Police Report, *supra* note 7, at 3.

<sup>75</sup> See Sentence of Court, *supra* note 6.

<sup>76</sup> See *Auburn Network*, 2022 WL 1528628, at \*12, para. 34.

<sup>77</sup> See *Augusta*, *supra* note 68, at 4823-24, para. 6; *Contemporary Media, Inc.*, 10 FCC Rcd 13685, 13688 (1995).

<sup>78</sup> See 1990 Policy Statement, *supra* note 49, at 3252.

<sup>79</sup> See *supra* para. 12.

cases,” in that “[t]hey did not involve fraud, bribery, perjury, or bodily injury.”<sup>80</sup> On the contrary, the facts surrounding his convictions implicate both fraud and bodily injury. As explained above, his lack of candor in tampering with evidence is a form of fraudulent representation.<sup>81</sup> And while his victim did not suffer bodily injury, his criminal conduct foreseeably placed his victim at risk of sexual assault. Mr. Wahl recklessly engaged in conduct that by definition placed or may have placed his victim “in danger of death or serious bodily injury.”<sup>82</sup> Moreover, the court declared that he caused his victim “substantial emotional harm” and went to a significant extent “to perpetrate harm”<sup>83</sup> on her. Mr. Wahl argues that “there is no evidence of FCC misconduct that has a nexus between [his] criminal behavior and his FCC licenses.”<sup>84</sup> Such a connection, however, is not a requirement under our character qualifications policy.<sup>85</sup>

20. *Nature of participation of managers or owners.* Mr. Wahl states in the AFR that he owns the station and “has operated his radio station since 1997.”<sup>86</sup> Thus, his misconduct is clearly that of a manager or owner and directly relevant to whether the license should be revoked.

21. *Efforts made to remedy the wrong.* To our knowledge, Mr. Wahl complied with the requirements imposed at his sentencing. But the AFR identifies no additional efforts he has made to remedy his wrongs.

22. *Overall record of compliance with Commission rules and policies.* Mr. Wahl asserts that “[h]e has a long history of honest dealing with the FCC and with compliance with the FCC’s rules. Mr. Wahl’s radio station has a record of compliance before the FCC.”<sup>87</sup> We are unaware of evidence to the contrary, so this factor weighs in Mr. Wahl’s favor.

23. *Rehabilitation.* Mr. Wahl’s misconduct is recent, and rehabilitation logically assumes the passage of time since the offense occurred. Thus, we cannot conclude that he has been rehabilitated, and this factor has little significance.<sup>88</sup>

24. *Summary.* On balance, we find that these factors weigh strongly in favor of revoking the license. Moreover, several factors aggravate Mr. Wahl’s criminal conduct. His misconduct was recent and willful and involved multiple criminal acts. Additionally, he inflicted emotional harm and the risk of bodily harm—including sexual assault—to the victim and also committed fraud in tampering with evidence. Because Mr. Wahl is the owner and operator of the station, his character determines whether the license should be revoked. While Mr. Wahl’s overall record of compliance with our Rules and policies mitigates his misconduct to some extent, that factor is far outweighed by the aggravating factors

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<sup>80</sup> See AFR, *supra* note 2, at 10.

<sup>81</sup> See *January 1986 Policy Statement*, *supra* note 51, at 1195-96, paras. 35-36.

<sup>82</sup> See 18 Pa. Stat. and Cons. Stat. Ann. § 2705 (West).

<sup>83</sup> See Sentence of Court, *supra* note 6, at 4.

<sup>84</sup> See AFR, *supra* note 2, at 10.

<sup>85</sup> The basis for revocation of Mr. Wahl’s license is his non-FCC misconduct under the standards delineated in that policy. And while we do find a nexus between his non-FCC misconduct and his truthfulness and reliability, even that finding is not necessary to establish a lack of character where the conduct is egregious. See *Richards*, *supra* note 72, at 3955, para. 26 (internal citation omitted).

<sup>86</sup> AFR, *supra* note 2, at 2.

<sup>87</sup> *Id.* at 2.

<sup>88</sup> Were the conduct at issue not recent, here we would look to factors such as the occurrence of more recent misconduct, the applicant’s reputation in the community, and efforts the licensee has taken to prevent future misconduct, along with the factors already addressed. See *1990 Policy Statement*, *supra* note 49, at 3252, para 4 n.3; *January 1986 Policy Statement*, *supra* note 51, at 1228-29, para. 105.



discussed above. In sum, we find Mr. Wahl's offenses to be egregious and render him unqualified to be a Commission licensee.

#### IV. ORDERING CLAUSE

25. Accordingly, **IT IS HEREBY ORDERED**, pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), and sections 1.115 and 1.720-1.740 of the Commission's Rules, 47 CFR §§ 1.115, 1.720-1.740, that the AFR is **DENIED**, the Revocation Order is **AFFIRMED**, and the license held by Mr. Wahl is **REVOKED**, effective the day after release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary