

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

In the Matter of)	
)	
AUBURN NETWORK, INC.)	MB Docket No. 21-20
)	
WANI(AM), Opelika, AL)	Facility ID No. 63796
)	
WGZZ(FM), Waverly, AL)	Facility ID No. 15283
)	
W242AX(FX), Auburn, AL)	Facility ID No. 146140
)	
W254AY(FX), Auburn, AL)	Facility ID No. 138347
)	
W294AR(FX), Auburn, AL)	Facility ID No. 14119
)	
WHBD-LD, Auburn, AL)	Facility ID No. 185816
)	
Application for Original Construction Permit)	File No. BNPFT-20180327ABZ
NEW(FX), Auburn, AL)	Facility ID No. 201389

HEARING DESIGNATION ORDER, ORDER TO SHOW CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING

Adopted: February 10, 2021

Released: February 11, 2021

By the Chief, Media Bureau

I. INTRODUCTION

1. This *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing* commences a hearing proceeding designating the Administrative Law Judge as the presiding officer to determine whether Michael G. Hubbard (Hubbard), president and 100 percent shareholder of Auburn Network, Inc. (ANI), and thus whether ANI, is qualified to be and to remain a holder of Federal Communications Commission (FCC or Commission) authorizations, and as a consequence thereof, whether ANI’s captioned authorizations for broadcast stations (Stations) should be revoked and its captioned application for an FM translator construction permit (Auburn Translator Application) should be granted or denied.

2. As discussed more fully below, Hubbard was recently convicted of a number of felonies under the Alabama Code of Ethics for Public Officials, Employees, Etc. (Alabama’s Ethics Act).¹ Given this, substantial and material questions exist as to whether, in light of Hubbard’s criminal convictions, Hubbard and, hence, ANI, possess the basic character qualifications to hold Commission authorizations.

¹ Ala. Code § 36-25. See *infra* para. 4.

² 47 U.S.C. §§ 309(e) (hearings), 312(a)(2) (revocation), 312(c) (same), 319 (construction permits).

3. The Chief, Media Bureau (Bureau), issues this *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing* pursuant to sections 309(e), 312(a)(2), 312(c), and 319 of the Communications Act of 1934, as amended (the Act),² and the Bureau's delegated authority.³

II. BACKGROUND

4. On June 3, 2016, a jury convicted Hubbard of twelve felony counts under Alabama's Ethics Act related to Hubbard's conduct while he was the Speaker of the Alabama House of Representatives.⁴ After multiple appeals, six of these felony convictions have been upheld: (a) two counts of soliciting or receiving a thing of value from a principal; (b) one count of using an official position for personal gain; (c) two counts of representing, for compensation, a business entity before an executive department or agency; and (d) one count of using public property for private benefit.⁵ Hubbard is now in the custody of the Alabama state penal system for a four-year sentence.⁶

5. On November 27, 2019, ANI filed applications for renewal of the Stations' licenses (Renewal Applications).⁷ The Renewal Applications are being held in abeyance pending the resolution of this proceeding. The Renewal Applications included an attachment detailing the Alabama trial court's adverse findings against Hubbard and the status of Hubbard's appeal.⁸ Subsequent amendments, filed on May 12, 2020, and September 28, 2020, provided updates on Hubbard's appeals in the Alabama state court system.⁹

6. After the Alabama Supreme Court upheld six of Hubbard's felony convictions, ANI filed an application for consent to assignment of its FCC authorizations (Assignment Application). The Commission accepted the Assignment Application for filing on September 21, 2020, and ANI amended the Assignment Application on October 20 and November 2, 2020.¹⁰ ANI seeks consent to assign its

³ See 47 CFR §§ 0.61, 0.283.

⁴ See *Alabama v. Hubbard*, No. CC-2014-000565.00 (Cir. Ct. of Lee C'ty, Ala. 2020).

⁵ See *Hubbard v. Alabama*, No. CR-16-0012 (Ala. Crim. App. Sept. 4, 2020).

⁶ Hubbard may have further appeal opportunities under federal law, but the Commission's policy is to adjudicate issues of character qualifications during the pendency of any such appeals. See *Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and Making of Misrepresentations to the Commission by Permittees and Licensees*, Report, Order, and Policy Statement, 102 F.C.C.2d 1179, 1205, para. 48 (1986 Character Policy Statement), recon. dismissed/denied, 1 FCC Rcd 421 (1986). See also *Policy Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (1990 Character Policy Statement), modified, Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991), further modified, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992). The 1986 Character Policy Statement and the 1990 Character Policy Statement are collectively referred to herein as *Character Qualifications Policy Statement*.

⁷ Application of ANI for Renewal of License for Station WANI(AM), Opelika, AL, as amended, File No. 0000094480 (filed Nov. 27, 2019) (WANI(AM) Renewal Application); Application of ANI for Renewal of License for Station WGZZ(FM), Waverly, AL, as amended, File No. 0000094478 (filed Nov. 27, 2019) (WGZZ(FM) Renewal Application). The WGZZ(FM) Renewal Application includes renewal applications for the three FM translator stations that rebroadcast the WGZZ(FM) signal. Application of ANI for Renewal of License for Station W242AX, Auburn, AL, as amended, File Nos. 0000091850, 0000094478 (filed Nov. 27, 2019); Application of ANI for Renewal of License for Station W254AY, Auburn, AL, as amended, File Nos. 0000091852, 0000094478 (filed Nov. 27, 2019); Application of ANI for Renewal of License for Station W294AR, Auburn, AL, as amended, File Nos. 0000091851, 0000094478 (filed Nov. 27, 2019).

⁸ WANI(AM) Renewal Application Attach. 2; WGZZ(FM) Renewal Application Attach. 2.

⁹ WANI(AM) Renewal Application, Attachs. 3 & 4; WGZZ(FM) Renewal Application, Attachs. 3 & 4.

¹⁰ Application of ANI and Auburn Networks, LLC for Assignment of Authorizations, as amended, File No. BALH-20200921AAA (filed Sept. 21, 2020). The Commission licenses and authorizations subject to the Assignment Application are those for WANI(AM), Opelika, AL, File No. BAL-20200921AAB; WGZZ(FM), Waverly, AL, File

(continued....)

authorizations to Auburn Networks, LLC (Assignee), an entity established and owned in its entirety by Frank Lee Perryman, a Commission licensee with no known qualifications issues.

7. The Assignment Application also includes information that the Bureau understands as a request for an exception to the Commission's *Jefferson Radio* policy,¹¹ which generally prohibits the assignment or transfer of a station license when character qualification issues are pending against the licensee.¹² As is explained in detail below, the Commission has adopted very limited exceptions to the *Jefferson Radio* policy based on specific public interest considerations.¹³ In accordance with the Bureau's finding below that such an exception here is not warranted under existing Commission precedent, the Assignment Application also will be held in abeyance pending the resolution of this proceeding.

III. DISCUSSION

8. Pursuant to section 309(e) of the Act, the Commission is required to designate an application for hearing if a substantial and material question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity.¹⁴ The character of an applicant is among those factors that the Commission considers in determining whether the applicant has the requisite qualifications to be a Commission licensee.¹⁵ Section 312(a)(2) of the Act provides that the Commission may revoke any license if "conditions com[e] to the attention of the Commission which would warrant it in refusing to grant a license or permit on the original application."¹⁶ Because the character of the applicant is among those factors the Commission considers in its review of applications to determine whether the applicant has the requisite qualifications to operate the station for which authority is sought,¹⁷ a character defect that would warrant the Commission's refusal to grant a license in the original application would likewise support a Commission determination to revoke a license or permit.

9. Under the Commission's *Character Qualifications Policy Statement*,¹⁸ non-FCC misconduct may raise a substantial and material question of fact concerning a licensee's character. In assessing character qualifications in broadcasting matters, the Commission considers, as relevant, "evidence of any conviction for misconduct constituting a felony."¹⁹ In particular, we have found that "[b]ecause all felonies are serious crimes, any conviction provides an indication of an applicant's or licensee's propensity to obey the law" and conform to provisions of both the Act and the Commission's

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No. File. No. BALH-20200921AAA; FM translator license W242AX, Auburn, AL, File. No. BAL-20200921AAD; FM translator license W254AY, Auburn, AL, File. No. BAL-20200921AAC; FM translator license W294AR, Auburn, AL, File. No. BAL-20200921AAE; and LPTV construction permit WHBD-LD, Auburn, AL, File. No. BAP-20200921AAF. WGZZ(FM), File. No. BALH-20200921AAA, has been designated as the lead file number for the Assignment Application, and all pleadings and other submissions filed in this matter that pertain generally to the transaction and not to a particular authorization are available through this file number.

¹¹ *Jefferson Radio Corp. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

¹² See *infra* note 25.

¹³ See *infra* note 31.

¹⁴ See 47 U.S.C. § 309(e).

¹⁵ See *Character Qualifications Policy Statement*.

¹⁶ 47 U.S.C. § 312(a)(2).

¹⁷ See *id.* § 308(b).

¹⁸ See *1986 Character Policy Statement*, 102 F.C.C.2d at 1189-91, para. 23; *1990 Character Policy Statement*, 5 FCC Rcd at 3252, para. 3.

¹⁹ See *1990 Character Policy Statement*, 5 FCC Rcd at 3252, para. 3. The term "non-FCC misconduct" refers to misconduct other than a violation of the Commission's rules or the Communications Act. *1986 Character Policy Statement*, 102 F.C.C.2d at 1183 n.11, para. 7.

rules and policies.²⁰ The question of whether misconduct is disqualifying turns on the facts of each case, including a consideration of any mitigating circumstances.²¹

10. Hubbard's convictions of six felonies related to violations of Alabama's Ethics Act while he was Speaker of the Alabama House of Representatives raise material and substantial question of fact as to whether he, and, hence, ANI, possess the requisite character qualifications to remain a Commission licensee. Reliability is a key element of character necessary to operate a broadcast station in the public interest.²² The propensity to comply with the law generally is relevant to character qualifications, and an applicant or licensee's willingness to violate other laws, and, in particular, to commit felonies, is indicative of whether the applicant or licensee will conform to the Commission's rules or policies.²³ Evidence of any felony conviction is relevant to an applicant's or licensee's character.²⁴

11. Based on the record before the Commission, there is a substantial and material question as to whether Hubbard, and thus, ANI, possesses the requisite character qualifications to be a Commission licensee. Accordingly, we designate for hearing appropriate issues to determine whether Hubbard, and therefore, ANI, possesses the requisite character qualifications to be a Commission licensee, and whether or not ANI's Commission authorizations should be revoked and whether the Auburn Translator Application should be granted, denied or dismissed.

12. *Jefferson Radio Policy.* ANI asks us to apply an exception to the Commission's *Jefferson Radio* policy and grant its Assignment Application.²⁵ The Commission's *Jefferson Radio* policy generally prohibits the assignment of a license where character qualifications issues are pending against the assignor.²⁶ This is because, as the Commission has explained, "there is no authorization to assign" if the seller ultimately is found unqualified.²⁷ The policy's underlying purpose is to prevent licensees from evading responsibility for wrongdoing by selling their stations.²⁸ The policy serves as a deterrent because

²⁰ *Id.*

²¹ *1990 Character Policy Statement*, 5 FCC Rcd at 3252, para. 5 ("While conviction for a felony raises questions of whether an applicant or licensee has the requisite propensity to obey the law, we continue to believe that there are mitigating factors that must be taken into consideration in our deliberations."); *1986 Character Policy Statement*, 102 F.C.C.2d at 1227-29, paras. 102-106 (discussion of mitigating factors).

²² See *1986 Character Policy Statement*, 102 F.C.C.2d at 1195, para. 35. The facts of Hubbard's felony convictions are *res judicata* and will not be retried in this proceeding.

²³ See *1990 Character Policy Statement*, 5 FCC Rcd at 3252, para. 3.

²⁴ See *id.*, para. 4.

²⁵ Assignment Application, attach. 8: (a) Statement Supporting Approval of the Assignment Application (Statement); (b) Additional Statement Supporting Approval of the Assignment Application (Additional Statement); (c) Legal Statement Regarding Adverse Fin[d]ings (Legal Statement); and (d) Amendment to Assignment Application (Amendment).

²⁶ Under this policy, mere allegations of an assignor's character defect are not sufficient to bar grant of an assignment application. *Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1027 (D.C. Cir. 1981); *Applications of T-Mobile Us, Inc., & Sprint Corp., for Consent to Transfer Control of Licenses & Authorizations, et al.*, 34 FCC Rcd 10578, 10597 (2019). Here, however, the record indicates, and the licensee has admitted, that its principal was convicted of a felony, and we are designating a character issue for hearing on that basis.

²⁷ *Cathryn C. Murphy*, Decision, 42 F.C.C.2d 346, 347 (1973) (*Murphy*).

²⁸ See, e.g., *Harry O'Connor*, Memorandum Opinion and Order and Notice of Apparent Liability, 2 F.C.C.2d 45, 48 (1965) (*O'Connor*) ("The purpose underlying this policy is obvious: A licensee cannot act inconsistently with the Communications Act or the Commission's rules and policies, and then, when a question is raised concerning such improper activity, transfer or assign the license to another; if he could, the only result of the wrongdoing would be a forced sale.").

a licensee would likely suffer an “awesome loss” from revocation or non-renewal of license.²⁹ This deterrent effect would be undermined if a licensee could “sell out from under a potential disqualification.”³⁰

13. In rare circumstances, the Commission has exempted sellers from application of the *Jefferson Radio* policy based on compelling public interest considerations.³¹ The Commission has long recognized the wrongdoer’s full withdrawal from broadcasting (usually due to a disability or failing health), a station’s continued service to underserved areas, and protection of creditors and lienholders as public interest benefits.³² Furthermore, the Commission normally requires that the seller receive no profit from the transfer.³³ Under these circumstances, the Commission has found that a proposed sale will not lessen the *Jefferson Radio* policy’s broad deterrent effect.

14. In the instant case, we find that Hubbard’s felony convictions must result in the application of the *Jefferson Radio* policy to the Assignment Application. ANI argues that Hubbard’s felony convictions need not be deemed dispositive of his and ANI’s basic qualifications to hold broadcast authorizations, given Hubbard’s record as a broadcaster, and the nature of the conduct that led to Hubbard’s conviction.³⁴ Although the Commission has stated that a felony conviction may not be disqualifying where there are sufficient mitigating factors,³⁵ we are unable to conclude on the record before us that Hubbard’s felony is not disqualifying. Rather, based on the felony conviction, we find that there is a substantial and material question as to whether Hubbard and ANI have the basic character qualifications to hold Commission broadcast licenses. This finding triggers the application of the

²⁹ See *Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1030 (D.C. Cir. 1981).

³⁰ See *Cellular System One of Tulsa, Inc.*, Memorandum Opinion and Order, 102 F.C.C.2d 86, 89-90 (1985) (“To permit a licensee to sell out from under a potential disqualification would significantly impair the Commission’s ability to police and deter licensee misconduct.”), citing *Pass Word, Inc.*, Order to Revoke Licenses, to Terminate Comparative Proceedings, and to Proceed with Docket 20941, 76 F.C.C.2d 465, 516 (1980), *modified*, 86 F.C.C.2d 437 (1981), *aff’d sub nom. Pass Word, Inc. v. FCC*, 673 F.2d 1363 (D.C. Cir. 1982).

³¹ See, e.g., *Hertz Broad. of Birmingham, Inc.*, Memorandum Opinion and Order, 57 F.C.C.2d 183, 184-85 (1976) (*Hertz*) (evidentiary hearing terminated on basis of principal’s disabling illness; station sale permitted for no profit); *Lois I. Pingree*, Memorandum Opinion and Order, 69 F.C.C.2d 2179, 2183-84, and Memorandum Opinion and Order, 68 F.C.C.2d 71 (1978) (*Pingree*) (no-profit sale of construction permit for new station in underserved area permitted where disability provides mitigation for wrongdoing); *Lane Broad. Corp.*, Letter Order, 20 FCC Rcd 19373, 19375 (MB 2005) (*Lane*) (exempting felon convicted of child molestation and child pornography from *Jefferson Radio* policy where felon will fully withdraw from broadcasting due to lengthy prison sentence, and proceeds from sale were distributed under strict supervision by District Attorney to fully satisfy innocent creditors and to ensure that no shareholder would receive direct benefit from the sale, with the “compelling” public interest factor that a significant portion of the sale proceeds would be directed to the felon’s victims and to programs which provide services to victims of child abuse, a creative resolution strongly supported by the District Attorney and state and federal officials).

³² *Lane*, 20 FCC Rcd at 19375.

³³ See *Little Dixie Radio, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 4375, 4378, para. 5 (2010) (*Little Dixie*) (*Bureau’s approval of assignment application to allow a convicted felon who was 78 years old and in failing health to sell without a restriction on receiving a profit was a departure from the Jefferson Radio policy and contrary to Commission precedent*); *Milton Broad. Co.*, Memorandum Opinion and Order, 12 F.C.C.2d 354 (1968) (licensee’s physical condition constituted an inadequate basis for invoking equitable powers to terminate a hearing where no claim was made that the assignor would not profit from the sale); *Walton Broad. Co.*, Memorandum Opinion and Order, 38 F.C.C.2d 207, 209-10 (1972) (*Walton*) (where a portion of proceeds were to be placed in irrevocable trust for the care and maintenance of licensee, proposed sale “violates our stricture against sanctioning a license assignment which will result in a significant benefit to a putative wrongdoer”); *Tinker, Inc.*, Memorandum Opinion and Order, 8 F.C.C.2d 22, 23 (1967).

³⁴ Legal Statement at 1-6.

³⁵ See *supra* note 21.

Jefferson Radio policy to the Assignment Application.³⁶

15. We also conclude ANI has not demonstrated a compelling public interest consideration that would warrant grant of an equitable exception to the *Jefferson Radio* policy. In its discussion of the exceptions to *Jefferson Radio*, ANI argues that neither ANI nor Hubbard would profit from the proposed sale or receive proceeds from the proposed sale and would only benefit by virtue of being released from debt.³⁷ Even assuming arguendo that will be the case, other factors weigh against finding an exception to *Jefferson Radio* on the facts of this case. First, the Assignment Application shows that the market in which the Stations operate is a well-served broadcast market, not an underserved market such that a revocation of the Stations' licenses would harm listeners to an extent that would outweigh considerations in favor of applying the policy.³⁸ In addition, most cases granting an exception to *Jefferson Radio*, other than situations where the licensee has filed for bankruptcy, involve licensees suffering a physical or mental disability, or other circumstances that provide an equitable basis for granting an exception, typically on the grounds that the licensee would be unable to participate in a hearing or that participating in a hearing would pose an undue health risk to the licensee.³⁹ Hubbard does not claim a similar disability or health risk. Accordingly, we find that it is inappropriate to apply an equitable exception to the Commission's *Jefferson Radio* policy under the circumstances presented here.

³⁶ See *supra* at paras. 12-13. The examination of these questions may include any mitigating factors.

³⁷ Statement at 3; Amendment at 1.

³⁸ Assignment Application, attach. 18 (23 stations with overlapping contours with ANI's full-service stations); compare *Little Dixie*, 25 FCC Rcd at 4379, para. 6 (disruption of the stations' operations is "likely to disrupt most radio service to the public in this underserved area"), *Pingree*, and *O'Connor* (buyer would return station to the air in a very underserved rural community). In cases involving well-served markets, an equitable exception has been applied only where a grant of an assignment application involved substantial public interest factors not found here. See, e.g., *Lane* (summarized at note 31 *supra*); see also *Wings Communications, Inc.*, 29 FCC Rcd 5171 (MB 2014) (instead of a sale, the station was being donated to Bethune-Cookman University, a historically black university, with a condition specifying that the donor could not claim any tax benefit from the donation). ANI also argues that the Assignee would continue to employ the Stations' existing 13 employees and that they lack alternative employment options. Statement at 3. However, we lack sufficient information to make any meaningful judgment about their employment prospects.

³⁹ See *Northwest Indiana Broad. Corp.*, 65 F.C.C.2d 66, 70, para. 12 (1977) (a demonstrated physical disability or disabling disease is one of four factors considered in determining whether apply an exception to *Jefferson Radio*); *Little Dixie* (elderly convicted felon in failing health); *Pingree* (permittee's extreme illness caused her to move out of state to be in the care of family members for years); *Hertz* (licensee completely disabled due to severe mental illness); *Walton* (licensee had been committed to a mental institution); *Murphy* (licensee had been committed to sanitarium due to chronic alcoholism and possible brain damage); *Martin R. Karig*, Memorandum Opinion and Order, 3 R.R.2d 669 (1964) (extreme physical disability). Compare *Northland Television, Inc.*, Memorandum Opinion and Order, 68 FCC Rcd 1566 (1978) (series of medical reports is too inconclusive to substantiate a disability).

IV. PROCEDURES FOR HEARING

16. *Written Hearings Report and Order.* The Commission recently supplemented its formal hearing processes by adopting rules that, *inter alia*, expand the use of a hearing procedure that relies in appropriate cases on written submissions and documentary evidence.⁴⁰ These hearing proceedings shall be resolved on a written record consisting of affirmative case, responsive case, and reply case submissions, along with all associated evidence in the record, including stipulations and agreements of the parties and official notice of material facts. Based on that record, the presiding officer will issue an Initial Decision pursuant to section 312(a) and (d) of the Act and sections 1.267 and 1.274(c) of the Rules.⁴¹ The Bureau finds that this is an appropriate case for use of those procedures.

17. *Initial Case Order.* After release of this *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing*, the presiding officer shall promptly release an Initial Case Order. The Initial Case Order shall inform all parties that they shall file timely Notices of Appearance in accordance with the Commission's rules,⁴² and shall put all parties on notice that they are expected to be fully cognizant of Part I of the Commission's rules concerning Practice and Procedure, 47 CFR Part 1, Subparts A and B. The Initial Case Order shall also set a date for the initial status conference and a date by which each party should file a pre-conference submission that would include (a) whether discovery is expected in this case, and if so, a proposed discovery schedule; (b) any preliminary motions they are intending to file; and (c) a proposed case schedule. The parties' pre-conference submission should also indicate whether they request that a Protective Order be entered in this case.

18. *Requests for Admissions.* In accordance with section 1.246 of the Commission's rules, any party may serve upon any other party written requests for the admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact.⁴³ Such requests shall be served within twenty (20) days after the deadline for filing a notice of appearance unless the presiding officer sets a different time frame.⁴⁴

19. *Initial Status Conference and Initial Status Conference Order.* During the initial status conference, the presiding officer shall set the case schedule, including any deadlines by which the parties should submit the motions they identified in their pre-conference submissions.⁴⁵ If discovery is anticipated, the presiding officer shall also set the discovery period. The presiding officer shall also set the deadlines for the parties' affirmative case, responsive case, and reply case submissions in accordance with sections 1.371-1.377 of the Commission's rules.⁴⁶ If the parties have requested the entrance of a Protective Order, the presiding officer shall also set a deadline by which a joint proposed Protective Order shall be submitted for consideration. In accordance with section 1.248(b) of the Commission's rules, the presiding officer may rule during the status conference or in an order following the conference.

⁴⁰ See *Procedural Streamlining of Administrative Hearings*, Report and Order, EB Docket No. 19-214, Report and Order, 35 FCC Rcd 10729 (2020) (*Written Hearings Report and Order*). These new procedures became effective on Nov. 5, 2020. See 85 Fed. Reg. 63166 (Oct. 6, 2020).

⁴¹ 47 U.S.C. § 212(a), (d); 47 CFR §§ 1.267, 1.274(c). That Initial Decision will be subject to review by the Commission pursuant to 47 CFR §§ 1.276-277 under the circumstances described therein.

⁴² See 47 CFR § 1.91(c).

⁴³ See 47 CFR § 1.246.

⁴⁴ See *id.*

⁴⁵ Section 1.294 of the Commission's rules shall determine the deadlines for oppositions (and replies, if permitted) for most interlocutory motions submitted to the presiding officer. See 47 CFR § 1.294. The filing deadlines for oppositions (and replies, if permitted) to motions to enlarge, change, or delete issues made pursuant to section 1.229 of the Commission's rules and motions to intervene made pursuant to section 1.223 of the Commission's rules, for example, shall be at the discretion of the presiding officer.

⁴⁶ See 47 CFR §§ 1.371-1.377.

20. Additional status conferences may be scheduled throughout the course of the proceeding at the request of the parties and/or at the discretion of the presiding officer. Any requests by a party for a status conference must be made in writing to the presiding officer and shall be copied on all other parties.

21. *Transcripts.* In accordance with section 1.248 of the Commission's rules, an official transcript of all case conferences shall be made, unless the parties and the presiding officer agree to forego a transcript.⁴⁷ Transcripts shall be made available to the public as part of the official record in the Commission's Electronic Comment Filing System (ECFS) in MB Docket No. 21-20.

22. *Evidentiary Rules.* In the *Written Hearings Report and Order*, the Commission amended section 1.351 of the rules to adopt the evidentiary standard set forth in the formal APA hearing requirements. In relevant part, section 1.351 of the Commission's rules now states, "any oral or documentary evidence may be adduced, but the presiding officer shall exclude irrelevant, immaterial, or unduly repetitious evidence."⁴⁸ The parties remain free to make evidentiary arguments based on the Federal Rules of Evidence.

23. *Petitions to Intervene.* Any person or entity seeking status as a party in interest in this proceeding must file a petition to intervene in accordance with section 1.223(a) of the Commission's rules.⁴⁹ Any person or entity seeking to participate in this proceeding as a party may file a petition for leave to intervene in accordance with section 1.223(b) of the Commission's rules.⁵⁰

24. *Motions to Enlarge, Change or Delete Issues.* Motions to enlarge, change, or delete issues to be considered in this proceeding shall be allowed, consistent with section 1.229 of the Commission's rules.⁵¹

25. *Restricted Proceeding.* This hearing proceeding is a "restricted" proceeding pursuant to section 1.1208 of the Commission's rules and thus *ex parte* presentations to or from Commission decision-making personnel, including the presiding officer and her staff and staff of the Commission's Media Bureau, are prohibited, except as otherwise provided in the Commission's rules.⁵²

26. *Electronic Filing of Documents.* All pleadings in this proceeding, as well as all letters, documents, or other written submissions including discovery requests and objections and responses thereto, excluding confidential and/or other protected material, must be filed in MB Docket No. 21-20 using ECFS.⁵³ ECFS shall also act as the repository for records of actions taken in this proceeding, excluding confidential and/or other protected material, by the presiding officer and the Commission.

27. *Case Caption.* The caption of any pleading filed in this proceeding, as well as all letters, documents, or other written submissions including discovery requests and objections and responses thereto, shall indicate whether it is to be acted upon by the Commission or the presiding officer.⁵⁴ The presiding officer shall be identified by name.

⁴⁷ See 47 CFR § 1.248.

⁴⁸ 47 CFR § 1.351.

⁴⁹ See 47 CFR § 1.223(a).

⁵⁰ See 47 CFR § 1.223(b).

⁵¹ See 47 CFR § 1.229.

⁵² See 47 CFR § 1.1208 ("Proceedings in which *ex parte* presentations are prohibited, referred to as 'restricted' proceedings, include . . . all proceedings that have been designated for hearing . . ."). See also 47 CFR §§ 1.1202(b) (describing what constitutes an *ex parte* presentation), 1.1204 (exceptions).

⁵³ See 47 CFR § 1.51.

⁵⁴ See 47 CFR § 1.209.

28. *Service.* Service on the Enforcement Bureau shall be made using the following email address: EBHearings@fcc.gov.

29. *Confidential and/or Otherwise Protected Materials.* To the extent any party to this proceeding wishes to submit materials or information that it would like withheld from the public record, it may do so in accordance with the procedures set forth in section 1.314 of the Commission's rules.⁵⁵ The parties may also enter into a Protective Order. As stated above, requests for a Protective Order should be made in the parties' pre-conference submission in accordance with the schedule set forth in the Initial Case Order.

30. *Initial Decision.* The presiding officer shall issue an Initial Decision on the issues set forth herein, as well as any other issues designated for hearing in the course of the proceeding. This Initial Decision shall contain, at a minimum, findings of fact and conclusions of law, as well as the reasons or basis therefor, and the appropriate rule or order or policy and the sanction, relief or denial thereof, as appropriate.⁵⁶

V. ORDERING CLAUSES

31. **ACCORDINGLY, IT IS ORDERED**, that pursuant to sections 309(e), 312(a)(2), 312(c) and 319 of the Communications Act of 1934, as amended,⁵⁷ that the captioned authorizations and application **ARE DESIGNATED FOR HEARING** in a consolidated proceeding before the FCC Administrative Law Judge, at a time and place to be specified in a subsequent order, upon the following issues:

- (a) To determine the effects, if any, of Michael G. Hubbard's felony convictions on his qualifications and thus the qualifications of Auburn Network, Inc. to be a Commission licensee. (b) To determine whether Michael G. Hubbard and thus Auburn Network, Inc. is qualified to be a Commission licensee;
- (c) To determine whether Auburn Network, Inc.'s Commission authorizations should be revoked; and
- (d) To determine whether the captioned application for original construction permit for a new FM translator station at Auburn, Alabama should be granted, denied, or dismissed.

32. **IT IS FURTHER ORDERED**, that pursuant to sections 1.91(c) and 1.221(c) of the Commission's Rules,⁵⁸ in order to avail itself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Auburn Network, Inc. and/or Michael G. Hubbard, in person or by an attorney, **SHALL FILE** within 20 days of the release of this *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing*, a written appearance stating its intention to appear at the hearing and present evidence on the issues specified above.

33. **IT IS FURTHER ORDERED**, pursuant to section 1.221(c) of the Commission's Rules,⁵⁹ that if Auburn Network, Inc. or Michael G. Hubbard fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of

⁵⁵ See 47 CFR § 1.314.

⁵⁶ See 47 CFR §§ 1.267, 1.274(c). The Initial Decision shall be subject to Commission review as set forth *id.* at 1.276-277.

⁵⁷ See 47 U.S.C. §§ 309(e), 312(a)(2), 312(c), and 319.

⁵⁸ See 47 CFR §§ 1.91(c), 1.221(c).

⁵⁹ See 47 CFR § 1.221(c).

said 20 days, the Administrative Law Judge shall expeditiously dismiss the captioned applications with prejudice for failure to prosecute.

34. **IT IS FURTHER ORDERED**, pursuant to sections 1.92(c) of the Commission's Rules,⁶⁰ that if Auburn Network, Inc. and/or Michael G. Hubbard, fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the right to a hearing shall be deemed waived. Where a hearing is waived, the Administrative Law Judge shall issue an order terminating the hearing proceeding and certifying the case to the Commission.

35. **IT IS FURTHER ORDERED** that the Chief, Enforcement Bureau, **IS MADE A PARTY** to this proceeding without the need to file a written appearance.

36. **IT IS FURTHER ORDERED** that, in accordance with section 312(d) of the Communications Act of 1934, as amended, and section 1.91(d) of the Commission's Rules,⁶¹ the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issues at paragraph 31 (a)-(c) **SHALL BE** upon the Commission's Enforcement Bureau.

37. **IT IS FURTHER ORDERED** that, in accordance with section 309(e) of the Communications Act of 1934, as amended, and section 1.254 of the Commission's Rules,⁶² the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issue at paragraph 31 (d) **SHALL BE** upon Auburn Network, Inc. and Michael G. Hubbard,.

38. **IT IS FURTHER ORDERED** that a copy of each document filed in this proceeding subsequent to the date of adoption of this *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing* **SHALL BE SERVED** on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy **SHALL BE ADDRESSED** to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

39. **IT IS FURTHER ORDERED**, that the parties to the captioned applications shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 73.3594 of the Commission's Rules,⁶³ **GIVE NOTICE** of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the satisfaction of such requirements as mandated by section 73.3594 of the Commission's Rules.⁶⁴

40. **IT IS FURTHER ORDERED**, that copies of this *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing* shall be sent via Certified Mail, Return Receipt Requested, and by regular first-class mail to Michael G. Hubbard, Auburn Network, Inc., P.O. Box 950, Auburn, AL 36831, and M. Scott Johnson, 5028 Wisconsin Avenue, N.W., Suite 301, Washington, DC 20016.

⁶⁰ See 47 CFR §1.92(c).

⁶¹ See 47 U.S.C. § 312(d); 47 CFR § 1.91(d).

⁶² See 47 U.S.C. § 309(e); 47 CFR § 1.254.

⁶³ See 47 U.S.C. § 311(a)(2); 47 CFR §73.3594.

⁶⁴ See 47 CFR § 73.3594.

41. **IT IS FURTHER ORDERED**, that the Secretary of the Commission shall cause to have this *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing* or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau