

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

In the Matter of	)	
	)	
	)	
<b>ROGER THOMAS SCAGGS</b>	)	EB Docket No. 03-241
	)	File No. EB-02-IH-0886
Advanced Class Amateur Radio Operator and	)	
Licensee of Amateur Radio Station W5EBC	)	

**ORDER OF REVOCATION**

**Adopted: April 22, 2004**

**Released: April 23, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. By this *Order of Revocation*, acting pursuant to authority delegated to the Enforcement Bureau under section 0.111(a)(16) of the Commission's rules,<sup>1</sup> we revoke the above-captioned Amateur license held by Roger Thomas Scaggs. We conclude, based on the evidence of his conviction for murder, that Mr. Scaggs lacks the basic requisite character qualifications to be and remain a Commission licensee.

**II. BACKGROUND**

2. On November 21, 2003, the Commission, by the Chief, Enforcement Bureau, designated this case for hearing.<sup>2</sup> The *OSC* specified the following issues:

- (a) to determine the effect of Roger Thomas Scaggs' felony conviction on his qualifications to be and to remain a Commission licensee; and
- (b) to determine, in light of the evidence adduced pursuant to the foregoing issue, whether Roger Thomas Scaggs is qualified to be and to remain a Commission licensee and whether his Amateur Radio Advanced Class License W5EBC be should be revoked.

3. The *OSC* ordered Mr. Scaggs, pursuant to section 1.91(c) of the Commission's rules,<sup>3</sup> within thirty days of the date of release of the *OSC* (*i.e.*, by December 22, 2003), in person or by his attorney, to file a written notice of appearance in order to avail himself of the opportunity to be heard.<sup>4</sup> The *OSC* provided that the notice of appearance state that Mr. Scaggs would appear on the date fixed for

<sup>1</sup> 47 C.F.R. § 0.111(a)(16).

<sup>2</sup> *Order to Show Cause*, 18 FCC Rcd 24367 (Enf. Bur. 2003) ("*OSC*").

<sup>3</sup> 47 C.F.R. § 1.91(c).

<sup>4</sup> *OSC*, 18 FCC Rcd at 24369, ¶ 7.

the hearing and present evidence on the specified issues.<sup>5</sup> The *OSC* informed Mr. Scaggs that, if he failed to so file a written notice of appearance, his right to a hearing on the matter of his amateur license would be deemed waived, and the proceeding would be resolved thereafter in accordance with section 1.92(c) of the Commission's rules.<sup>6</sup>

4. The Presiding Judge determined that Mr. Scaggs had received a copy of the *OSC* but had failed to file a written notice of appearance seeking to avail himself of the opportunity to be heard.<sup>7</sup> Accordingly, the Presiding Judge concluded that Mr. Scaggs had waived his right to a hearing, and the Presiding Judge terminated the proceeding and certified the case to the Commission for disposition in accordance with section 1.92(c) of the Commission's rules.<sup>8</sup> The Commission has delegated authority to the Enforcement Bureau for such revocation proceedings, terminated on the basis of waiver, pursuant to section 0.111(a)(16) of the Commission's rules.<sup>9</sup>

### III. DISCUSSION

#### A. Facts

5. Mr. Scaggs has held an amateur license since 1954. The Commission's records do not reveal any violations by him of the Communications Act of 1934, as amended (the "Act"),<sup>10</sup> or the Commission's rules. However, on November 16, 1998, approximately six months after the Commission's last renewal of his captioned amateur radio license,<sup>11</sup> Mr. Scaggs was convicted for the March 6, 1996, homicide of Penny Scaggs, his wife of thirty-five years.<sup>12</sup> The record in that case showed that Mr. Scaggs beat his wife to death with a galvanized lead pipe and then stabbed her several times in their home.<sup>13</sup> Mr. Scaggs was convicted of murder by a jury and sentenced by the same jury to a prison term of thirty-two years and fined ten thousand dollars (\$10,000.00).<sup>14</sup> Mr. Scaggs' conviction was

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, ¶ 8. See also 47 C.F.R. § 1.92(c). Section 1.92(c) provides that, whenever a hearing is waived, the presiding administrative law judge shall, at the earliest practicable date, issue an order reciting the events or circumstances constituting a waiver of hearing, terminating the hearing proceeding, and certifying the case to the Commission. See also 47 C.F.R. § 1.92(a).

<sup>7</sup> *Memorandum Opinion and Order*, FCC 04M-03, released January 26, 2004. Therein, the Presiding Judge noted that Mr. Scaggs had sent a letter to the Chief, Enforcement Bureau, in which he argued that his record as a licensee did not warrant revocation of his license in light of existing precedent. Letter from Roger Thomas Scaggs to David H. Solomon, Chief, Enforcement Bureau, FCC (Dec. 19, 2003) ("Scaggs Letter"). The Presiding Judge determined that the Scaggs letter did not qualify as a notice of appearance, as Mr. Scaggs stated therein that he could not appear for the hearing because of his incarceration. The Presiding Judge deemed Mr. Scaggs' incarceration as "not of controlling significance" as to whether he or his attorney could have appeared at the hearing. *MO&O*, at 1, n. 2.

<sup>8</sup> *Id.*, p. 2. See also 47 C.F.R. § 1.92(c).

<sup>9</sup> 47 C.F.R. § 0.111(a)(16).

<sup>10</sup> 47 U.S.C. § 151 *et seq.*

<sup>11</sup> On May 28, 1998, the Commission granted Mr. Scaggs' Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and the General Mobile Radio Services (FCC Form 605), File No. 9504030452 (dated May 22, 1995) and issued him the above-captioned amateur authorization.

<sup>12</sup> See *State of Texas v. Scaggs*, No. 963026 (299<sup>th</sup> Judicial District of Travis County, Texas, February 5, 1999) (unpublished); see also Texas Penal Code § 19.02(b)(1). As stated in the *OSC*, "[t]he fact of Mr. Scaggs' felony conviction is *res judicata* and will not be retried in this hearing." *OSC*, 18 FCC Rcd at 23468, n. 13.

<sup>13</sup> See *State of Texas v. Scaggs*, 18 S.W. 3d 277 (Ct. App. Texas, Austin 2000).

<sup>14</sup> *Id.*

affirmed, and his request for rehearing overruled on June 22, 2000.<sup>15</sup> Mr. Scaggs reports that he is pursuing post-conviction relief in the United States District Court.<sup>16</sup>

## B. Discussion

6. Section 312(a)(2) of the Act provides that the Commission may revoke any license “because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application.”<sup>17</sup> Among the factors that the Commission considers in determining whether the applicant has the requisite qualifications to operate the station for which authority is sought is the character of the licensee or applicant.<sup>18</sup> In making character assessments, the Commission focuses on misconduct that demonstrates the licensee’s or applicant’s proclivity to deal truthfully with the Commission and to comply with its rules and policies.<sup>19</sup> The Commission has consistently applied character standards developed for broadcasters to applicants and licensees in the amateur radio service.<sup>20</sup>

7. The Commission considers relevant “evidence of any conviction for misconduct constituting a felony.”<sup>21</sup> The Commission believes 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 to conform to provisions of both the Act and the agency’s rules and policies.<sup>22</sup> In this case, Mr. Scaggs has been convicted of a most serious felony – in this case the brutal murder of his wife of thirty-five years.<sup>23</sup> We find that such egregious criminal misconduct justifies a finding that Mr. Scaggs will obey the law

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<sup>15</sup> *Id.*

<sup>16</sup> Scaggs Letter, *supra* note 7. Mr. Scaggs also submits a letter from Mr. Ken Shifrin, who identifies himself as Chairman of the Board of American Physicians Service Group, Inc. Letter from Ken Shifrin to FCC (Dec. 10, 2003). Mr. Shifrin declares under penalty of perjury that he has known Mr. Scaggs since 1985 and that Mr. Scaggs “has always demonstrated a great deal of honesty and integrity.” *Id.*

<sup>17</sup> 47 U.S.C. § 312(a)(2).

<sup>18</sup> 47 U.S.C. § 308(b).

<sup>19</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1190-91 (1986) (subsequent history omitted) (“*Character Policy Statement*”).

<sup>20</sup> *See, e.g., Schoenbohm v. FCC*, 204 F.3d 243, 246-49 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 968 (2000) (affirming the Commission’s denial of an amateur radio operator’s license renewal application based on the licensee’s felony conviction for computer fraud, as well as his lack of candor regarding such conviction); *George E. Rodgers*, Hearing Designation Order, 10 FCC Rcd 3978 (WTB 1995) (finding that an amateur radio licensee’s felony conviction for indecent assault upon and corruption of minors raised a material question of fact regarding his character and qualifications to remain a Commission licensee); *Thomas M. Haynie*, Order to Show Cause and Suspension Order, 7 FCC Rcd 4994 (FOB 1992), *affirmed and licenses revoked*, 7 FCC Rcd 7291 (PRB 1992) (revoking general radiotelephone operator, amateur advanced class radio and amateur radio station licenses because of the licensee’s felony conviction for intentional interference with satellite communications); *Jerry E. Gastil*, Order to Show Cause, 4 FCC Rcd 3977 (PRB, FOB 1989) (finding that a general radio operator and amateur radio licensee’s felony conviction for interfering with governmental radio communications raised serious questions regarding his character and qualifications to remain a Commission licensee).

<sup>21</sup> *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (“*1990 Character Order*”) (subsequent history omitted).

<sup>22</sup> *Id.*

<sup>23</sup> *State of Texas v. Scaggs*, *supra* note 13, 18 S.W. 3d at 281.

only when it suits him.<sup>24</sup> Mr. Scaggs' record as an amateur licensee and the assertions of Mr. Shifrin, Mr. Scaggs' sole character witness, who, notably, did not address Mr. Scaggs' criminal conviction or any of the related circumstances, are not sufficient to overcome the impact of Mr. Scaggs' crime.<sup>25</sup> Thus, we find that Mr. Scaggs does not possess the character qualifications required by this Commission to be or remain a licensee.

### C. License Revocation

8. The Commission's character policies<sup>26</sup> provide that any felony conviction is a matter predictive of licensee behavior and is directly relevant to the functioning of the Commission's regulatory mission. The extremely serious conviction described above mandates the conclusion that Mr. Scaggs does not possess the requisite qualifications to be or remain a Commission licensee. Based on the foregoing, we conclude, as a matter of law, that Mr. Scaggs' above-captioned license should be revoked.

## IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to section 312 of the Communications Act of 1934, as amended,<sup>27</sup> and sections 1.92(d) and 0.111(a)(16) of the Commission's rules,<sup>28</sup> that the captioned amateur license held by Roger Thomas Scaggs IS REVOKED, effective the fortieth (40th) day after release of this Order, unless Mr. Scaggs files a petition for reconsideration or application for review within thirty (30) days of the release of this Order, in which case the effective date will be suspended, pending further Order of the Commission.

10. IT IS FURTHER ORDERED that copies of this ORDER OF REVOCATION shall be sent by Certified Mail Return Receipt Requested to Roger Thomas Scaggs, RR 2 Box 4400, Gatesville, Texas 76597, with a copy to Charles R. Burton, Esq., Minton, Burton, Foster & Collins, 1100 Guadalupe Street, Austin, Texas 78701.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>24</sup> See *Contemporary Media, Inc.*, 13 FCC Rcd 14437, 14442, ¶ 11 (1998), *recon. denied*, 14 FCC Rcd 8790 (1999), *aff'd Contemporary Media, Inc., v. FCC*, 214 F.3d 187 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 920 (2001).

<sup>25</sup> *Id.*, 13 FCC Rcd at 14445, ¶ 15.

<sup>26</sup> *Character Policy Statement*, *supra* note 19; *1990 Character Order*, *supra* note 21.

<sup>27</sup> 47 U.S.C. § 312.

<sup>28</sup> 47 C.F.R. §§ 1.92(d) and 0.111(a)(16).