

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

In the Matter of	)	EB Docket No. 05-232
	)	
DAVID EDWARD COX	)	File No. EB-04-IH-0384
	)	
Amateur Radio Operator and Licensee of Amateur	)	
Radio Station W5OER	)	

**ORDER OF REVOCATION**

**Adopted: December 4, 2006**

**Released: December 4, 2006**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. By this *Order of Revocation*, 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 David Edward Cox. We conclude, based on the evidence of his conviction for felony burglary and firearms-related offenses, that Mr. Cox lacks the basic requisite character qualifications to be and remain a Commission licensee.

**II. BACKGROUND**

2. On September 29, 2005, 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 David Edward Cox's felony convictions 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 David Edward Cox is qualified to be and to remain a Commission licensee and whether his Amateur Radio License W5OER should be revoked.<sup>3</sup>

3. The *OSC* ordered Mr. Cox, pursuant to Section 1.91(c) of the Commission's rules,<sup>4</sup> within thirty (30) days of the date of release of the *OSC* (*i.e.*, by October 30, 2005), 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>5</sup> The *OSC* required that the notice of appearance state that Mr. Cox would appear on the date fixed for the hearing and present evidence on the specified issues.<sup>6</sup> The *OSC* informed Mr. Cox that, if he failed to so file a

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

<sup>2</sup> See *In re David Edward Cox*, Order to Show Cause, 20 FCC Rcd 15155 (2005) ("*OSC*").

<sup>3</sup> *Id.* at 15157.

<sup>4</sup> See 47 C.F.R. § 1.91(c).

<sup>5</sup> See *OSC*, 20 FCC Rcd at 15157 ¶ 7.

<sup>6</sup> See *id.*

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>7</sup>

4. The Presiding Judge determined that Mr. Cox 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>8</sup> Accordingly, the Presiding Judge concluded that Mr. Cox 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>9</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>10</sup>

### III. DISCUSSION

#### A. Facts

5. Mr. Cox has held an amateur license since 1995. The Commission's records do not reveal any violations by him of the Communications Act of 1934, as amended (the "Act"),<sup>11</sup> or the Commission's rules. However, on August 27, 2003, Mr. Cox was arrested and subsequently charged with two counts of simple burglary, each a felony.<sup>12</sup> On January 8, 2004, the District Court of Louisiana convicted Mr. Cox on both counts and sentenced him to five (5) years incarceration at hard labor, but suspended the sentence and placed Mr. Cox on supervised probation for five (5) years.<sup>13</sup> Mr. Cox was released from jail on January 14, 2004. On September 21, 2004, Mr. Cox was arrested again and has been incarcerated since that date.<sup>14</sup> Following a plea agreement, on June 3, 2005, the United States District Court sentenced Mr. Cox to concurrent terms of forty-one (41) months for felony violations of various firearms provisions contained in Section 922(g)(1), 922(j) and 924(l) of the United States Criminal Code.<sup>15</sup> The Court also ordered him to make restitution to Redstick Firearms and Indoor Range in the amount of three thousand dollars (\$3,000).<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

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<sup>7</sup> See *id.*, ¶ 8; 47 C.F.R. § 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).

<sup>8</sup> See *In the Matter of David Edward Cox, Memorandum Opinion and Order*, FCC 05M-57, released November 22, 2005.

<sup>9</sup> See *id.* See also 47 C.F.R. § 1.92(c).

<sup>10</sup> 47 C.F.R. § 0.111(a)(16).

<sup>11</sup> 47 U.S.C. § 151 et seq.

<sup>12</sup> See Record of Arrest On: Cox, David E., East Baton Rouge Parish Sheriff's Office, dated November 29, 2004.

<sup>13</sup> See *State of Louisiana v. David Edward Cox*, No. 08-03-289 (19<sup>th</sup> Judicial District Court, Parish of East Baton Rouge, Louisiana, January 8, 2004) (unpublished).

<sup>14</sup> See *supra*, note 12.

<sup>15</sup> See *United States of America v. David E. Cox*, No. 3:04CR00137-001 (M.D. La., June 3, 2005) (unpublished). 18 U.S.C. §§ 922(g)(1) (possession of a firearm by a convicted felon), 922(j) (possession of a stolen firearm), and 924(l) (theft of a firearm from a licensed firearms dealer).

<sup>16</sup> See *id.*

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. Cox has been convicted of several felonies.<sup>23</sup> We find that such egregious criminal misconduct justifies a finding that Mr. Cox will obey the law only when it suits him.<sup>24</sup> Mr. Cox’s record as an amateur licensee and his assertions regarding his character and his crimes<sup>25</sup> are insufficient to overcome the impact of the crimes.<sup>26</sup> Thus, we find that Mr. Cox does not possess the character qualifications required by this Commission to be or remain a licensee.

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<sup>17</sup> 47 U.S.C. § 312(a)(2).

<sup>18</sup> See 47 U.S.C. § 308(b).

<sup>19</sup> See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1188-90 ¶¶ 20-23 (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> See *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, ¶ 4 (1990) (“*1990 Character Order*”) (subsequent history omitted).

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

<sup>23</sup> *State of Louisiana v. David Edward Cox*, *supra* note 13; *United States of America v. David E. Cox*, *supra* note 15.

<sup>24</sup> See, e.g., *Contemporary Media, Inc.*, 13 FCC Rcd 14437, 14442, ¶ 11 (1998), *Recons. 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) (“*Contemporary Media*”).

<sup>25</sup> See Letter from David E. Cox to James W. Shook, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated September 17, 2004.

<sup>26</sup> See *Contemporary Media*, 13 FCC Rcd at 14445, ¶ 15.

### C. License Revocation

8. The Commission's character policies 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.<sup>27</sup> The serious convictions described above mandate the conclusion that Mr. Cox 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. Cox's 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>28</sup> and Sections 1.92(d) and 0.111(a)(17) of the Commission's rules,<sup>29</sup> that the captioned amateur license held by David Edward Cox **IS REVOKED**, effective the fortieth (40th) day after release of this Order, unless Mr. Cox 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 David Edward Cox, Register No. 04275-095, F.D.C. Houston, 1200 Texas Avenue, Houston, Texas 77002 and to David Edward Cox, 16420 Stoney Point Burch Road, Pride, Louisiana 70770.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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<sup>27</sup> See *Character Policy Statement*, *supra* note 19; *1990 Character Order*, *supra* note 21.

<sup>28</sup> See 47 U.S.C. § 312.

<sup>29</sup> See 47 C.F.R. §§ 1.92(d), 0.111(a)(16).