

## FCC MAIL SECTION

Before the  
Federal Communications Commission

Washington, D.C. 20554  
AUG 3 13 PM '92

MM Docket No. 92-711  
DISPATCHED BY

In the Matter of

WAYNE C. MURPHY

Licensee of Station WDAT(AM)  
Amory, Mississippi

Order to Show Cause Why the License  
for Station WDAT(AM), Amory,  
Mississippi, Should Not Be Revoked

**Appearances**

Wayne C. Murphy *pro se*,<sup>1</sup> and James W. Shook on behalf  
of Chief, Mass Media Bureau, Federal Communications  
Commission.

**SUMMARY DECISION OF ADMINISTRATIVE  
LAW JUDGE WALTER C. MILLER**

Issued: July 24, 1992;

Released: August 3, 1992

**Preliminary Statement**

1. On March 26, 1992, the Commission ordered Wayne C. Murphy (Murphy) to show cause why the license for WDAT (AM), Amory, Mississippi should not be revoked. *See* FCC 92-92. They did so after investigating why WDAT(AM) has been off-the-air without authority since June 15, 1989.

2. The prehearing conference was held on June 24, 1992. Wayne Murphy failed to appear. *See* FCC 92M-721 released June 30, 1992. We held the scheduled evidentiary admission session on July 2, 1992. Wayne Murphy again failed to appear. *See* FCC 92M-757 released July 7, 1992. On July 8, 1992 the Mass Media Bureau filed a Motion for Summary Decision. They want Murphy's license revoked, and this proceeding terminated. Again Wayne Murphy failed to respond.<sup>2</sup>

**Ruling**

3. The Mass Media Bureau's unopposed Motion for Summary Decision will be granted. Since no genuine material issue of fact exists, the truth is clear. Murphy has violated designated issues 3(a) and 3(b). *See* FCC 92-92 *supra*. They will be resolved against him.

**Findings of Fact**

4. Wayne Murphy is now and has been the licensee of Station WDAT(AM), Amory, Mississippi. On February 4, he asked and received permission from the Commission to remain silent until June 15, 1989. That permission was granted so that Murphy could resolve his financial difficulties.

5. Murphy never put WDAT back on the air. On November 8, 1990 and again on August 20, 1991, the Chief, Audio Services Division sent Murphy a letter. The Chief called on Murphy to submit information concerning his (Murphy's) compliance or noncompliance with 47 CFR 73.1740 (Minimum Operating Schedule)<sup>3</sup> and 47 CFR 73.1750 (Discontinuance of Operation).<sup>4</sup> The Chief's November 8, 1990 and August 20, 1991 letters were sent to Murphy at his last known address-of-record. The U.S. Postal Service returned both letters as being undeliverable.

6. So, on March 26, 1992, the Commission released an Order to Show Cause and Hearing Designation Order. *See* FCC 92-92 *supra*. There they designated 47 CFR 73.1740 and 73.1750 issues against Murphy and directed him to show cause why the license for Station WDAT(AM) should not be revoked. The Commission further instructed Murphy to file his 47 CFR 1.91(c) notice of appearance on or before April 27, 1992.

7. Murphy did so. On April 27, 1992 attorneys Catherine M. Withers and M. Scott Johnson of Gardner, Carton, and Douglas filed an appearance notice on Murphy's behalf. They represented that Murphy would appear and give evidence on the issues the Commission wanted heard.

8. The Mass Media Bureau was instructed to initiate any discovery (if it so desired) on or before May 8, 1992. The Bureau initiated timely discovery on May 7, 1992. They served a Request for Admissions on Murphy.

9. After obtaining an extension of time, Murphy responded to those admissions on May 28, 1992. In that response Murphy admitted that Station WDAT is silent and has been since February 4, 1989; that he (Murphy) only received Commission permission to remain silent until June 15, 1989; that he hasn't requested permission to remain silent after June 15, 1989; and that he is not financially able to return Station WDAT to operation at this time.

10. Although Murphy did not and has not submitted a request to suspend the hearing pursuant to the Commission's *Minority Distress Sales Policy*<sup>5</sup>, in his May 28, 1992 response he asserted that he had "... entered into an agreement in principle with a minority person" for the sale of the station. Moreover, he and this unnamed minority person have not submitted an assignment application.

11. The following week, on June 3, 1992, Withers and Johnson withdrew as Murphy's Counsel. *See* FCC 92M-648 released June 8, 1992.<sup>6</sup> In so doing they indicated that any further communications and correspondence should be directed to:

Wayne C. Murphy  
1220 E. Northside Drive, #230  
Jackson, Ms. 39211

12. Their withdrawal caused the Trial Judge to alert Murphy about his obligations to appear here in Washington, D.C. at the prehearing Conference scheduled for June 24, 1992; the Evidentiary Admission Session scheduled for July 2, 1992; and the Hearing scheduled for July 27, 1992.

13. We convened the scheduled prehearing conference on June 24, 1992. Wayne Murphy failed to appear. Instead, and part way through the conference the Trial Judge was handed a Western Union telegram purportedly signed by "Wayne C. Murphy, licensee."

14. The telegram was sent from Reno, Nevada at 2:54 a.m. (PDT). It requested a continuance of the prehearing and stated "Inches from finalizing sale to local minority businessman. Expect transfer under minority distress sale policy . . ."

15. This too-little-too late ploy resulted in the Trial Judge declaring Murphy to be in a state of default. See FCC 92M-721, released June 30, 1992. The Trial Judge admonished Murphy to attend the July 2, 1992 evidentiary admission session, and pointed out to him that he was dangerously close to having WDAT(AM)'s license summarily revoked.

16. We held the scheduled evidentiary admission session on July 2, 1992. Again, Wayne Murphy failed to appear. This time he didn't even bother to send an untimely telegram. As a consequence of Murphy's double-default the Trial Judge invited the Bureau to file a Motion for Summary Decision in lieu of holding an *in absentia* hearing on July 27, 1992. The Bureau accepted that invitation, and on July 8, 1992, filed the Motion for Summary Decision described in paras. 2-3 *supra*. As previously noted, Murphy once again has failed to respond.

#### Conclusions of Law

1. Station WDAT(AM), Amory, Mississippi has been off the air without authority since June 15, 1989. This extended unauthorized silence has apparently been due to financial difficulties its licensee, Wayne Murphy, has experienced and is experiencing. Thus, Murphy has been in continuous violation of 47 CFR 73.1740(a)(4) and 47 CFR 73.1750 for over three years.

2. During the three years of unauthorized silence the Commission has attempted to obtain information from Murphy about his compliance with 47 CFR 73.1740 and 73.1750. They sent Murphy letters on November 8, 1990 and again on August 20, 1991. Those letters were sent to Murphy at his last known address-of-record. The U.S. Postal Service returned them both as undeliverable.

3. After the Commission designated WDAT(AM) for hearing, they were able to temporarily establish limited and sporadic contact with Murphy (Findings 6-14 *supra*). However, even that occasional contact broke down, and the Trial Judge declared Murphy in default for failing to attend the June 24, 1992 prehearing conference. Murphy remained in a state of default by failing to attend the July 2, 1992 evidentiary admission session, and now he has failed to respond to the Mass Media Bureau's request for summary decision.

4. In sum, Station WDAT(AM) has been silent without Commission authorization since June 15, 1989, and no reasonable likelihood exists that the Station will return to the air within the foreseeable future. In such situations,

Commission policy is to revoke the station's license. See *Radio Northwest Broadcasting Company*, 4 FCC Rcd 546 (1989).

SO the Motion for Summary Decision that the Mass Media Bureau filed on July 8, 1992, IS GRANTED; and

Unless an appeal is taken from this Summary Decision or the Commission reviews it on its own motion, Wayne C. Murphy's license for Station WDAT(AM), Amory, Mississippi, IS REVOKED;<sup>7</sup> and this proceeding IS TERMINATED.

#### FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller  
Administrative Law Judge

#### FOOTNOTES

<sup>1</sup> There was a period of time when Mr. Murphy was represented by Catherine M. Withers and M. Scott Johnson of Gardner, Carton, and Douglas. However Withers and Johnson withdrew their Notice of Appearance on June 8, 1992. See FCC 92M-648.

<sup>2</sup> Any Comments on or Oppositions to the Bureau's motion were due on or before July 22, 1992.

<sup>3</sup> 47 CFR 73.1740(a)(4) provides: In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

<sup>4</sup> 47 CFR 73.1750 provides: The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation.

<sup>5</sup> *Statement of Policy on Minority Ownership in Broadcasting Facilities*, 68 FCC 2d 979 (1978); *Clarification of Distress Sale Policy*, 44 RR 2d 479 (1978). Also see, *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 FCC 2d 849 (1982).

<sup>6</sup> It shouldn't pass unnoticed that Murphy's counsel needed an extension of time to respond to the Bureau's May 7, 1992 Request for Admissions. See FCC 92M-589 released May 21, 1992.

<sup>7</sup> If exceptions aren't filed within 30 days, and the Commission doesn't review the case on its own motion, this Summary Decision will become effective 50 days after its public release.