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

MM Docket No. 92-40

In the Matter of

ANDREW L. BANAS

Licensee of Station WAPR(AM),
Avon Park, Florida

Order to Show Cause Why the
License for Station WAPR(AM),
Avon Park, Florida, Should Not
Be Revoked

ORDER TO SHOW CAUSE
AND
HEARING DESIGNATION ORDER

Adopted: February 27, 1992; Released: March 26, 1992

By the Commission:

1. The Commission has before it for consideration (a) the license held by Andrew L. Banas ("Banas") for Station WAPR(AM), Avon Park, Florida, and (b) the results of an investigation into WAPR(AM)'s silent status.

2. The Commission's records indicate that WAPR(AM) has been off the air without authority since March 8, 1990. By letters, dated November 6, 1990, and August 21, 1991, the Commission staff requested Banas to submit information concerning its compliance with § 73.1740 (Minimum Operating Schedule) and § 73.1750 (Discontinuance of Operation) of the Commission's Rules. However, to date, the Commission has not received a response to the official letters of inquiry. Because WAPR(AM) has apparently been off the air without authority for an extended period of time and the licensee has neither turned in its license nor responded to the official Commission inquiries about WAPR(AM)'s silent status, Banas is in apparent violation of §§ 73.1740(a)(4)[1] and 73.1750,[2] of the Commission's Rules.

3. Accordingly, IT IS ORDERED, That, pursuant to § 312(a)(3) and (4) of the Communications Act of 1934, as amended, the licensee is DIRECTED TO SHOW CAUSE why the license for Station WAPR(AM) should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(a) To determine whether Banas has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether Banas is qualified to be and remain the licensee of Station WAPR(AM).

4. IT IS FURTHER ORDERED, That the Chief, Mass Media Bureau, SHALL SERVE upon the licensee within thirty (30) days of the release of this Order, a BILL OF PARTICULARS, with respect to the issues specified above.

5. IT IS FURTHER ORDERED, That, pursuant to § 312(d) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the MASS MEDIA BUREAU.

6. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, SHALL FILE with the Commission within thirty (30) days of the receipt of this Order a WRITTEN APPEARANCE stating that it will appear at the hearing and present evidence on the matters specified in this Order. If the licensee fails to file a written appearance within the time specified, or within thirty (30) days of receipt of this Order the licensee files a written statement expressly waiving its right to a hearing, the licensee's right to a hearing SHALL BE DEEMED TO BE WAIVED. In the event the right to a hearing is waived, the Presiding Judge, or the Chief Administrative Law Judge if no Presiding Judge has been designated, SHALL TERMINATE the hearing proceeding and CERTIFY this case to the Commission in the regular course of business, and an appropriate Order shall be entered. See §§ 1.92(c) and (d) of the Commission's Rules.[3]

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[1] Section 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.

[2] Section 73.1750 provides:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuation of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

[3] The Commission has delegated authority to the Mass Media

7. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order revoking the license for WAPR(AM), it shall be determined, pursuant to § 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the licensee in an amount not exceeding $250,000.00 for the willful and/or repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That this document constitutes a NOTICE OF APPARENT LIABILITY for willful and repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion here should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

9. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Order, by Certified Mail - Return Receipt Requested, to Banas at the following addresses, which include the last known address-of-record for the licensee:

Andrew L. Banas
Radio Station WAPR(AM)
12408 Olive Trail
Plymouth, Indiana 46563

Andrew L. Banas
Radio Station WAPR(AM)
U.S. Highway 27 South
Suite 5801
Avon Park, Florida 33825

Andrew L. Banas
Radio Station WAPR(AM)
Rural Route 2
Plymouth, Indiana

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Bureau to issue revocation orders in silent station cases. See *Radio Northwest Broadcasting Company*, 4 FCC Rcd 596, n.3 (1989).