

FCC MAIL SECTION

Nov 30

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

MM Docket No. 93-299

In the Matter of

Cavan Communications Corporation

Licensee of Station WTMS(AM)  
Presque Isle, Maine

Order to Show Cause Why the  
License for Station WTMS(AM)  
Presque Isle, Maine Should  
Not be Revoked

**ORDER TO SHOW CAUSE  
AND  
HEARING DESIGNATION ORDER**

Adopted: November 12, 1993; Released: November 30, 1993

By the Chief, Audio Services Division:

1. The Chief, Audio Services Division, Mass Media Bureau, has before him for consideration: (a) the license held by Cavan Communications Corporation ("Cavan") for Station WTMS(AM), Presque Isle, Maine; and (b) the results of an investigation into WTMS(AM)'s silent status.<sup>1</sup>

2. The Commission's records indicate that WTMS(AM) has been off the air since March 29, 1991.<sup>2</sup> The licensee's last request for authority to remain silent, dated March 22, 1993, indicated that the station had been silent due to financial difficulties and that a memorandum of understanding had been reached for the sale of the station to a new owner. Authority to remain silent was granted through June 30, 1993 by letter, dated March 30, 1993, from the

<sup>1</sup> The Mass Media Bureau has been delegated authority to issue and release Show Cause Orders in cases involving silent broadcast stations. See *Debrine Communications, Inc.*, 7 FCC Rcd 2118 (1992).

<sup>2</sup> The license renewal application (BR-901204UV) for WTMS(AM) was granted on March 27, 1991, for a period expiring on April 1, 1998.

<sup>3</sup> 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

Chief, AM Branch, Audio Services Division, Mass Media Bureau. In that letter, Cavan was advised that any future requests for authority to remain silent must be accompanied by a detailed summary of steps being taken to return WTMS(AM) to on-air operations. By letter dated July 26, 1993, the Chief, AM Branch wrote Cavan stating that Commission records showed that WTMS(AM) has been off the air without authority, and required Cavan to request an extension of its silent authority or to return the station's authorization. Cavan has not responded to the letter.

3. Inasmuch as Cavan has neither requested an extension of its silence authority nor demonstrated that causes beyond its control prevent it from resuming broadcast operations, Cavan is in apparent violation of Section 73.1740(a)(4) of the Commission's Rules.<sup>3</sup> Furthermore, because of the protracted period of time in which the station has been silent, and because Cavan apparently lacks the ability and/or intent to restore WTMS(AM) to broadcast status, Cavan is also in apparent violation of Section 73.1750 of the Commission's Rules.<sup>4</sup>

4. Accordingly, IT IS ORDERED. That pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Cavan Communications Corporation is DIRECTED TO SHOW CAUSE why the license for Station WTMS(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 Cavan Communications Corporation has the capability and intent to expeditiously resume broadcast operations of WTMS(AM) consistent with the Commission's Rules.

(b) To determine whether Cavan Communications Corporation has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Cavan Communications Corporation is qualified to be and remain the licensee of Station WTMS(AM).

5. IT IS FURTHER ORDERED. That, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the

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> Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance 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, D.C. for cancellation."

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 it the opportunity to be heard, the licensee, pursuant to Section 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 the 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 his 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.<sup>5</sup>

7. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order revoking the license for WTMS(AM), Presque Isle, Maine it shall be determined, pursuant to Section 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 for the willful and/or repeated violation of Section 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 Section 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.

FEDERAL COMMUNICATIONS COMMISSION

Larry D. Eads, Chief  
Audio Services Division  
Mass Media Bureau

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<sup>5</sup> The Mass Media Bureau has been delegated authority to issue Revocation Orders in cases involving silent broadcast stations. See *Radio Northwest Broadcasting Company*, 4 FCC Rcd 596, n.3 (1989).