

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

OCT 16 1996

IN REPLY REFER TO:
1800C1-MGK
93030695

Release Date: October 18, 1996

CERTIFIED MAIL. RETURN RECEIPT REQUESTED

Rasa Communications Corp.
Permittee, Station KIXA-FM
12408 Hesperia Road, Suite 1
Victorville, California 92392
Att: Mr. Marcelino Q. Garza, President

Dear Mr. Garza:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief, Mass Media Bureau, by Section 0.283(c)(3) of the Commission's Rules.

By letter of May 5, 1993, we inquired into alleged violations of Commission rules on Rasa Communication's part. You replied on June 4, 1993, and subsequently supplemented your answer in pleadings of September 2, 1993,¹ January 18, 1995, and January 26, 1995. We have reviewed these various submissions, and on the basis of this review conclude as follows.

Unauthorized transfer of control. Under Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules, control of a broadcast station may not be transferred without prior Commission consent. It appears that you were in violation of these provisions from May 27, 1992, when you entered into a Program Services Agreement with Topaz Broadcasting, Inc., until January 9, 1995, when you terminated the agreement and became, you assert, Station KIXA's sole programmer.

Looking first to the terms of the Program Services Agreement itself, they exceed the boundaries generally acceptable for agreements of this nature. Specifically, under the Program Services Agreement, Topaz Broadcasting is to provide you with a main studio facility, obtain and lend you, without charge, transmission, studio and STL equipment necessary for construction, and install the equipment at its own expense. Further, "substantially all" of Station KIXA's air time is to be programmed by Topaz Broadcasting, with you limited to a maximum of eight hours per week (during the hours of 1 a.m. to 5 a.m. Monday through Saturday and 4 a.m. to 7 a.m. on Sunday) for the broadcast of your own

¹ This pleading opposed an informal objection to your applications to reinstate an expired construction permit and to modify your construction permit.

regularly scheduled programming. Construction and operation under the agreement, in short, are the responsibility of the programmer.

In practice too, Topaz Broadcasting appears to have controlled Station KIXA's affairs. J. D. Stephenson, Vice-President of Topaz Broadcasting, not only supervised construction of the station, but also discovered and assumed responsibility for correcting various problems requiring Commission attention. To this end, he at one point contacted Thomas Gammon, officer, director and sole stockholder of Topaz Broadcasting, who himself consulted with Commission staff and directed that their instructions be followed. While both Mr. Stephenson and Mr. Gammon refer, in their statements, to "assisting" and "helping" you at various stages of construction, we find in the record no evidence of your meaningful participation in the construction process.

Nor do you appear to have participated in the operation of the station. During the period in question, Station KIXA shared a main studio with stations owned by Thomas Gammon and was simulcast with two of his stations.² It did not have its own telephone number for the first few months of its operation, and when its toll-free number was obtained, it was obtained by Mr. Stephenson, who also appears to have monitored compliance with such other Commission rules as the public file provision. Station KIXA's "own" two employees, in turn, appear to have performed functions for all stations located at the studio, leaving Rasa Communications with no operating identity or presence independent of the Gammon properties as a group.

Considered together, the totality of these circumstances--namely the terms of the Program Services Agreement, the process of Station KIXA's construction, and the manner of its operation -- lead inevitably to a finding of control by Topaz Broadcasting rather than by Rasa Communications, the licensee of record. Hence, until the Program Services Agreement was terminated, you were in violation of Sections 310(d) of the Communications Act and 73.3540 of the Commission's Rules.

Unauthorized operation. Section 73.1620 of the Commission's Rules in pertinent part permits program tests to be conducted upon completion of construction, so long as the Commission is notified of the program tests and a license application is filed within 10 days thereafter. The facilities tested must have been constructed in accordance with the terms of the construction permit and the technical provisions of the application.

You concede that Station KIXA initiated program tests on November 23, 1992, without notifying the Commission. You admit also that the station commenced operation from a

² Station KIXA shared studio space with Stations KZXY-AM/FM, Apple Valley, California, both licensed to Ruby Broadcasting, Inc. Its programming was simulcast on Station KZXY-AM and on Station KIXW-FM, Lenwood, California, licensed to Turquoise Broadcasting, Inc. Like Topaz Broadcasting, Ruby Broadcasting and Turquoise Broadcasting are solely owned by Thomas Gammon.

tower site approximately 130 feet from the site specified in the construction permit, and with an antenna at a lower elevation on the tower than that originally specified. While acknowledging that your program tests were inappropriate under these circumstances, you suggest that your rule violations reflected inadvertence and misunderstanding rather than an intention to circumvent our requirements.

You note, in this regard, that you informed the Commission of your operation, albeit not in the manner required by our rules. On December 3, 1992, you filed a request for Special Temporary Authority to operate with facilities at variance with those authorized in your construction permit, and on December 10, 1992, you filed a modification application to cover the changes. The request for Special Temporary Authority was never acted upon, and the modification application was returned to you on February 23, 1993. You subsequently filed an application to reinstate expired construction permit on April 19, 1993, and a second modification application and a license application on April 27, 1993. All of these applications are pending before the Commission.³

Other rule violations. You have admitted to violations of Section 73.1125(c) of the Commission's Rules (station main studio location), in that you failed to maintain a local or toll-free telephone number for approximately the first three months of your operation, and of Section 73.3526 of the Commission's Rules (local public inspection file of commercial stations), in that your public file was missing from its designated location for an unspecified period ending in November 1992.⁴ You have also admitted to a failure to include the Program Services Agreement in your local public inspection file, as required by Section 73.3526(a)(12), from the time you entered into the agreement until May 1993.

In view of the above, it appears that from May 27, 1992, until January 9, 1995, you were in violation of Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules. You also appear to have violated Section 73.1620 of the Commission's Rules by initiating program tests in November 1992, without appropriate notification to the Commission and without the timely filing of a license application. It appears further that you violated Section 73.1125 of the Commission's Rules by failing to maintain a local or toll-free telephone number during approximately the first three months of your operation, and that you violated Section 73.3526 of the Commission's Rules by failing to maintain a local public inspection file during November 1992, and by failing to include a copy of your Program Services Agreement in the local public inspection file from the time you entered into it until May 1993.

With respect to these violations, pursuant to Section 503(b) of the Communications Act, you are hereby advised of your apparent liability for a forfeiture of nineteen thousand five hundred

³ Action on these applications has been withheld pending resolution of this enforcement action.

⁴ Allegations that the public file was missing in February 1993, are contested. We make no finding of a violation in this instance.

dollars (\$19,500). This amount was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act, taking into account the nature, circumstances, extent and gravity of the violations.

Turning first to the unauthorized transfer of control, we assess a forfeiture of \$10,000. This figure is consistent with assessments of comparable forfeitures for comparable rule violations in such cases as Hampton Radio, Inc., 10 FCC Rcd 11070 (MMB 1995), and FM Broadcasters of Douglas County, 10 FCC Rcd 8254 (MMB 1995).

As for the unauthorized operation, Metro Program Network, Inc., 5 FCC Rcd 2940 (1990); Triad Broadcasting Company, Inc., 96 FCC 2d 1235 (1984); and Equivox, Inc., 87 FCC 2d 1099 (1981), all assess forfeitures of \$20,000 for unauthorized operations, under circumstances where the facilities actually constructed varied significantly from those specified in the Commission authorization.⁵ These opinions emphasize the potentially serious hazards to air navigation and radio interference created by the unauthorized operations. Your deviations, in contrast, were minor in nature, and the threats that they posed to air navigation and radio interference were slight ones. Further, you disclosed the deviations promptly and voluntarily, and took immediate action to bring your operation into compliance with our rules. Given all of these considerations, we consider a forfeiture of \$7,500 appropriate.

Your violations of the main studio and local public inspection file provisions are independently minor in nature. Considered together, however, and combined with your unauthorized transfer of control over station operations to your programmer, we believe that these violations warrant imposition of a \$2,000 forfeiture in your case.

In regard to this forfeiture, you are afforded a period of thirty (30) days from the date of this Notice "to show, in writing, why a forfeiture penalty should not be imposed or pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 are summarized in the attachment to this Notice.

FEDERAL COMMUNICATIONS COMMISSION


Roy J. Stewart
Chief, Mass Media Bureau

⁵ In Metro Program Network, for example, the facilities were built 25.4 miles from the authorized location, in Triad Broadcasting Company the licensee increased its power from 34 kW to 100 kW, and in Equivox the licensee changed its antenna location and increased its tower height from 75 feet to 140 feet without permission.