

DUPLICATE FILE COPY
ORIGINAL

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
JUN 15 4 24 PM '93

DISPATCHED BY
MM Docket No. 93-151

In re Applications of

The Rex Company

For Renewal of License of Station KBZB(AM), Bisbee, Arizona
BR-831115UA
BR-900420YB

HEARING DESIGNATION ORDER

Adopted: May 25, 1993; Released: June 10, 1993

By the Commission:

1. The Commission has before it: (a) the captioned applications for renewal of license filed by the Rex Company ("Rex"), licensee of KBZB(AM), Bisbee, Arizona and, (b) the results of an investigation into KBZB(AM)'s silent status.

2. The Commission's records indicate that KBZB(AM) has been silent since at least January 20, 1988. The current renewal of license application for KBZB(AM) has not been acted upon because of the station's silent status.¹ Action on the previous renewal of license application (File No. BR-831115UA) was deferred because the licensee of KBZB(AM) at the time the renewal was filed was a bankruptcy trustee, Bruce D. Bridegroom. On April 21, 1988, the Commission granted an assignment of the KBZB(AM) license from Bridegroom to Rex. This grant was conditioned upon the assignee resuming broadcast operations within sixty days of the consummation of the assignment. The grant further indicated that action upon the then-pending renewal of license application would be withheld until the station returned to the air. On July 7, 1988, the

¹ It is the Commission's general policy to defer action on a station's renewal of license application while that station is silent.

² 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

Commission approved the station's application for a construction permit to change its tower location (File No. BP-880120AF). Authority to remain silent during the construction period was approved for the duration of that permit. The permit expired on January 7, 1990 and was cancelled on February 19, 1991, due to the licensee's failure to file either an application for an extension of the permit, or a license to cover the permit. No request to reinstate the permit has been filed by Rex.

3. By letter, dated July 17, 1992, the Chief, AM Branch, Audio Services Division, Mass Media Bureau, requested that Rex submit information concerning its compliance with Section 73.1740 (Minimum Operating Schedule) and Section 73.1750 (Discontinuance of Operation) of the Commission's Rules.² Rex responded to this request only after a subsequent letter, dated September 25, 1992, from the Chief, AM Branch, informed Rex that its failure to respond would subject the KBZB(AM) renewal of license application to dismissal for failure to prosecute, pursuant to Section 73.3568(b) of the Commission's Rules. In its response, dated October 13, 1992, Rex stated that it was attempting "to raise additional capital to return KBZB(AM) to the air." No further explanation was given as to its intended steps to resume broadcast operations. By letter, dated December 17, 1992, Rex was granted a further extension of its silent authority, which expired March 14, 1993, and was advised that any future extension request was to be accompanied by a detailed summary of steps taken to return KBZB(AM) to on-air operations. Rex has not requested an extension and is currently off the air without authority. This fact, coupled with KBZB(AM)'s long-standing silence, supports our determination that Rex is in apparent violation of Sections 73.1740(a)(4) and 73.1750 of the Commission's Rules. We believe that the evidence before us is sufficient to raise a substantial and material question of fact regarding Rex's capability and intent to resume the broadcast operations of KBZB(AM). We will therefore designate the KBZB(AM) renewal of license applications for an evidentiary hearing on appropriate issues specified below.

4. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 309(e), the renewal of license applications of Station KBZB(AM), Bisbee, Arizona, ARE DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, upon the following issues:

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."

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."

(a) To determine whether the Rex Company has the capability and intent to expeditiously resume broadcast operations of KBZB(AM) consistent with the Commission's Rules.

(b) To determine whether the Rex Company 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 preceding issues, whether or not grant of the subject renewal of license applications would serve the public interest, convenience and necessity.

5. IT IS FURTHER ORDERED, That in the event it is determined that grant of the renewal of license applications would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation, the precise period of time to be established in the hearing. Failure to resume operations within the time specified in the condition will result in the cancellation of the license and the deletion of the station's call letters.

6. IT IS FURTHER ORDERED, That, in accordance with Section 309(e) 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 LICENSEE, The Rex Company.

7. IT IS FURTHER ORDERED, That to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.221(c) of the Commission's Rules, SHALL FILE with the Commission, in person or by attorney, within twenty (20) days of the mailing of this Order, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the licensee herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

9. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order denying the renewal of license applications of KBZB(AM), Bisbee, Arizona, 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 \$250,000.00 for the willful and/or repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended. The Commission has determined that, in every case designated for hearing involving alleged violations which also come within the purview of Section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice as to maintain the fullest possible flexibility of action. Accordingly, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of this case should be.

11. IT IS FURTHER ORDERED, That the Secretary send by Certified Mail-Return Receipt Requested, a copy of this Order to the licensee at the following address:

Marvin King, General Manager
The Rex Company
1121 Plaza Azul
Sierra Vista, Arizona 85635

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy 6/14/93

Donna R. Searcy
Secretary