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**FEDERAL COMMUNICATIONS
COMMISSION**

In re:) FCC 98M-49
)
MARK A. RABENOLD)
Oroville, Washington) CIB DOCKET NO. 98-47
)
Order to Show Cause Why a)
Cease and Desist Order)
Should Not Be Issued)

Pages: 1 through 8

Place: Washington, D.C.

Date: May 19, 1998

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Before the
 FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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 Mark Rabenold)
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 Should Not Be Issued)

Room 234
 Federal Communications
 Commission
 2000 L Street, N.W.
 Washington, D.C. 20554

Tuesday,
 May 19, 1998

The parties met, pursuant to the notice of the
 Administrative Law Judge, at 9:00 a.m.

BEFORE: JOHN M. FRYSIAK
 Administrative Law Judge

APPEARANCES:

For the Plaintiff:

ROY W. BOYCE, ESQ.
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APPEARANCES: (Cont'd)

For the Defendant:

No Appearance

1 incomplete and voids process."

2 In light of that, the posture taken in the
3 document which Mr. Rabenold did file, and as well his
4 failure to appear here today and as far as I know, make any
5 other attempts to appear here today, I think that it would
6 be appropriate to certify this matter to the Commission
7 personally to Section 1.92 of the Rules, because I think it
8 is fairly clear that Mr. Rabenold doesn't intend to present
9 evidence.

10 THE COURT: Well, I have a problem with the
11 filing. He seems to be appearing sui juris. Although he's
12 challenging the jurisdiction, I don't know. Often the
13 problem is that you procure them as filed, and then request
14 provision of facts. This period had not yet run.

15 MR. BOYCE: If Your Honor would prefer we could
16 await Mr. Rabenold's response, if any, to our request for
17 admissions.

18 THE COURT: That would be my thinking. I think it
19 might be more judicious to await your request for summary
20 disposition.

21 MR. BOYCE: And at that juncture, we would file a
22 motion, assuming he doesn't file a responsible answer -- a
23 responsive answer, then I think it would be appropriate to
24 move to certify the matter to the Commission.

25 THE COURT: Right. And a cease and desist order

1 would follow upon the grant of your summary disposition
2 request.

3 MR. BOYCE: Well, Your Honor, are you referring to
4 a motion for summary decision or a motion to certify it --
5 in other words, Section 1.92 states that, "If a Respondent
6 fails to file a notice of appearance indicating that he will
7 appear at a hearing and present evidence on the matters
8 specified in the order, then the matter shall be certified
9 to the Commission. And the Commission will then dispose of
10 the case."

11 THE COURT: I know the section. If we take the
12 position that this filing by Mr. Rabenold, is, in fact, a
13 notice of appearance, then I think that the certification
14 doesn't apply, but the summary disposition applies.

15 MR. BOYCE: Well, I don't -- we don't want to deny
16 Mr. Rabenold the opportunity for a hearing based on a
17 technicality. But I think that this document that he
18 submitted -- in other words, a notice of appearance should
19 reflect some inclination on the part of the Respondent to
20 appear at the hearing and to present evidence. And I think
21 if anything, this document is a notice that he does not
22 intend to appear at the hearing and present evidence.

23 And in that sense, if he also has not appeared at
24 this pre-hearing conference and does not provide a
25 responsive response to our request for admission, then I

1 think this can properly be viewed as not constituting a
2 notice of appearance, because it does indicate any
3 disposition on Mr. Rabenold's part to present -- to appear
4 at the hearing and present evidence. So, I think that if he
5 does not, in addition to not showing up today, does not
6 provide a responsive response to our request for admission,
7 then I think we can construe this as not constituting a
8 notice of appearance -- a valid notice of appearance.

9 That not being just on a hypertechnical sense, but
10 on the sense that Mr. Rabenold will have made abundantly
11 clear that he has no intent to appear at the hearing and
12 present evidence, which it is the purpose of a notice of
13 appearance to determine.

14 THE COURT: Well, I think your position is further
15 supported by the fact that Mr. Rabenold returned the order
16 to show cause and notice of opportunity for hearing with the
17 notation, "Not accepted. Refused for cause and without
18 dishonor."

19 MR. BOYCE: Yes, Your Honor. And I think
20 certainly, the state of the record even today would permit a
21 finding that he did not intend to appear and present
22 evidence, but certainly we are willing to await to see
23 whether anything is forthcoming from him, in terms of an
24 answer to our request for admissions. But I think if
25 nothing is forthcoming or if it is not responsive in

1 accordance with the rules, then I think we can conclude that
2 he does not intend to appear and present evidence, and that
3 the matter can then be certified to the Commission.

4 And we would propose to so move once his time has
5 expired.

6 THE COURT: So, that your request for admission of
7 facts, then, is of no consequence.

8 MS. JAMESON-CURTIS: Right.

9 MR. BOYCE: Well, if you were disposed to certify
10 the matter to the Commission today, then our request for
11 admissions could be dismissed as moot.

12 THE COURT: Well, all right. I agree with the
13 Bureau that the filing made by Mr. Rabenold does not
14 constitute a notice of appearance, but that it does indicate
15 that he does not wish to -- intend to pursue the matter
16 inasmuch as he has failed to comply with these hearing. I
17 have no other choice but to certify the matter.

18 MR. BOYCE: That is acceptable to us, Your Honor.

19 THE COURT: What is your time for compliance?

20 MR. BOYCE: I think it was filed on May 8. So, it
21 would be 10 days plus three days for mailing. I have not
22 figured out the exact date. I should have done that, but I
23 apologize that I didn't.

24 MS. JAMESON-CURTIS: Counting from the day after
25 it was mailed. You said three days for mailing, you started

1 counting the 10 days. We mailed it out on the -- I don't
2 have the stamped one.

3 MR. BOYCE: I believe it was filed on May 8. So,
4 I would say if we haven't heard anything by next week, it
5 can be assumed that --

6 THE COURT: May 22. All right. Is there anything
7 else that we should cover?

8 MR. BOYCE: No, Your Honor.

9 THE COURT: All right. Well, you will await my
10 order. Nothing further to do, we stand adjourned.

11 MR. BOYCE: Thank you, Your Honor.

12 MS. JAMESON-CURTIS: Thank you.

13 (Whereupon, at 9:10 a.m., the hearing concluded to
14 reconvene sine die.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: FCC 98M-49; CIB No.: 98-47

CASE TITLE: Mark A. Rabenold

HEARING DATE: May 19, 1998

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 5-19-98

Michael S. Conrad

Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
Washington, D.C. 20005

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 5/16/98

Nancy McHugh
Official Transcriber
Heritage Reporting Corporation

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 5/25/98

Judith Hines
Official Proofreader
Heritage Reporting Corporation