

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

In the Matter of)	
)	
Mount Rushmore Broadcasting, Inc.)	File No.: EB-01-DV-435
)	NAL/Acct. No. 200232800005
)	FRN 0005-0081-23
Licensee, Station KZMX (FM))	
Hot Springs, South Dakota)	
Facility ID #46712)	

MEMORANDUM OPINION AND ORDER

Adopted: June 6, 2003

Released: June 10, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the petition for reconsideration filed on November 29, 2002, by Mount Rushmore Broadcasting, Inc., (“Mount Rushmore”). Mount Rushmore seeks reconsideration of the *Forfeiture Order*¹ in which the Chief, Enforcement Bureau (“Bureau”), found it liable for a monetary forfeiture in the amount of \$3,000 for willful violation of Sections 73.1350 and 73.1400 of the Commission’s Rules (“Rules”).² The noted violations involve Mount Rushmore’s inability to access its station’s power and modulation levels by remote control from the main studio, its inability to turn its station’s transmitter on or off by remote control from the main studio and its failure to establish monitoring procedures and schedules to determine compliance with operating power and modulation levels.

II. BACKGROUND

2. Mount Rushmore is the licensee of Station KZMX(FM), Hot Springs, South Dakota. On April 6, 2001, an agent from the Commission’s Denver, Colorado, Field Office (“Denver Office”) inspected station KZMX-FM. During the inspection the agent found that station personnel were unable to access the station’s power and modulation levels by remote control from the main studio, that station personnel were unable to turn the station’s transmitter on or off by remote control from the main studio and that Mount Rushmore had not established monitoring procedures and schedules to determine compliance with the prescribed operating power and modulation levels.

3. On January 2, 2002, the Denver Office issued a Notice of Violation (“NOV”) to Mount Rushmore for the violations detected during the inspection. In its response to the NOV, Mount Rushmore stated that it had corrected the violations.

4. On May 31, 2002, the District Director of the Denver Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”)³ in the amount of \$3,000 for willful violation of Sections 73.1350 and

¹ 17 FCC Rcd 21398 (Enf. Bur. 2002).

² 47 C.F.R. §§ 73.1350 and 73.1400.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232800005 (Enf. Bur., Denver Office, released May 31, 2002).

73.1400 of the Rules. Mount Rushmore did not file a response to the *NAL*. The Bureau's *Forfeiture Order*, released October 29, 2002, affirmed the forfeiture proposed by the *NAL*. On November 29, 2002, Mount Rushmore filed a petition for reconsideration of the *Forfeiture Order*. Mount Rushmore does not dispute the violations but requests cancellation or reduction of the forfeiture. Without elaborating, Mount Rushmore simply states that its violations were not willful, and notes that it has corrected the violations and that the forfeiture is "very big for a small operator." On May 15, 2003, Mount Rushmore supplemented its petition for reconsideration with copies of its 1999, 2000, and 2001 federal income tax returns.

III. DISCUSSION

5. Section 312(f)(1) of the Communications Act of 1934, as amended ("Act"), 47 USC § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991); see also *Nan Tan Computer Co.*, 9 FCC Rcd 3092 (1994). Section 73.1350 of the Rules includes requirements that a station's transmitter personnel have the capability to turn the transmitter off at all times and that the licensee establish monitoring procedures and schedules to determine compliance with the prescribed operating power and modulation levels. Section 73.1400 requires a licensee to ensure that its station operates at all times within the tolerances specified by the applicable technical rules. Compliance with these requirements is essential because failure to comply with them can cause serious technical problems, including interference to other stations' transmissions. Mount Rushmore has provided no information indicating that it took any steps to assure its compliance with Sections 73.1350 and 73.1400 prior to the occurrence of the violations.⁴ We conclude that Mount Rushmore willfully violated Sections 73.1350 and 73.1400 of the Rules.

6. Mount Rushmore's corrective action does not mitigate its violations. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."⁵

7. We have reviewed the financial information provided by Mount Rushmore and we find that this information does not provide a basis for reduction or cancellation of the forfeiture. Indeed, the forfeiture is a very small percentage of its gross revenues.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act⁶ and Section 1.106 of the Rules,⁷ Mount Rushmore's petition for reconsideration of the October 29, 2002, *Forfeiture Order* **IS DENIED**.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules⁸ within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified,

⁴ See, e.g., *East Tennessee Radio Group, L.P.*, DA 03-868 (Enf. Bur., released March 26, 2003); and *Monroe Area Broadcasters, Inc.*, DA 03-1033 (Enf. Bur., released April 7, 2003).

⁵ See also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21871 (2002).

⁶ 47 U.S.C. § 405.

⁷ 47 C.F.R. § 1.106.

the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁹ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232800005, and FRN 0005-0081-23. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

10. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Jan Gray, President, Mount Rushmore Broadcasting, Inc., 218 N. Wolcott St., Caspar, Wyoming 82601.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁸ 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 504(a).

¹⁰ See 47 C.F.R. § 1.1914.