

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

In the Matter of	)	
	)	
Brahmin Broadcasting Corporation	)	
	)	File Number: EB-07-DV-132
Licensee of Station KRAE-AM	)	
Cheyenne, WY	)	NAL/Acct. No.: 200732800006
Facility ID # 35510	)	FRN: 0010593085

**MEMORANDUM OPINION AND ORDER**

**Adopted:** October 22, 2008

**Released:** October 24, 2008

By the Associate Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, issued pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 1.106 of the Commission’s rules,<sup>2</sup> we deny a Petition for Reconsideration (“*Petition*”) filed on April 1, 2008, by Brahmin Broadcasting Corporation (“Brahmin”), licensee of station KRAE, in Cheyenne, Wyoming, of a *Forfeiture Order*<sup>3</sup> issued by the Western Region (“Region”) of the Enforcement Bureau, imposing a four thousand, two hundred dollar (\$4,200) monetary forfeiture against Brahmin for repeated violation of Section 73.49 of the Commission’s Rules (“Rules”).<sup>4</sup> The noted violation concerned Brahmin’s failure to enclose the KRAE antenna tower within an effective locked fence or other enclosure.<sup>5</sup> For the reasons discussed below, we deny Brahmin’s *Petition* and affirm the forfeiture.

**II. BACKGROUND**

2. On March 6, 2007, agents from the Enforcement Bureau's Denver District Office conducted an inspection of a structure located at approximately 41° 07' 26" north latitude and 104° 49' 12" west longitude in Cheyenne, Wyoming. Close observation revealed that a single wooden panel section of the base fence, approximately six feet in width, was laying on the ground, and allowing access to the structure, a series-fed antenna with an insulated base. The agents observed that the structure resided in an open field located within a residential area. A search of the Commission's database on-scene confirmed that the structure was broadcasting the signal of KRAE, an AM station licensed to Brahmin, in Cheyenne, Wyoming.

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<sup>1</sup> 47 U.S.C. § 405.

<sup>2</sup> 47 C.F.R. § 1.106.

<sup>3</sup> *Brahmin Broadcasting Corporation*, 23 FCC Rcd 3519 (EB 2008) (“*Forfeiture Order*”).

<sup>4</sup> 47 C.F.R. § 73.49.

<sup>5</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732800006 (Enf. Bur., Western Region, Denver Office, released July 31, 2007).

3. Later on March 6, 2007, the agents arrived at the KRAE studio and issued a verbal warning regarding the base fence violation to the two Brahmin employees present for the inspection. The agents interviewed Brahmin's business manager and the chief engineer for KRAE. During the interview, the engineer acknowledged that he had received a call on February 20, 2007, regarding an issue with KRAE's base fence. The engineer assumed that the caller, a former owner of the station, was merely referring to a single vertical slat of the fence, which the engineer recounts that he had repaired the week prior to the call, when informing Brahmin of a "hole in the fence."<sup>6</sup> The engineer admitted on March 6, 2007, that he had yet to revisit the KRAE transmitter site in order to assess the damage to the fence as of the date of the agents' interview. The KRAE staff indicated to the agents that they would immediately repair the fence. Brahmin confirms in the *Response* to the *NAL* that the fence was repaired on March 6, 2007, and was completely replaced in May of 2007.

4. On July 31, 2007, the Denver Office issued a *NAL* in the amount of \$7,000 to Brahmin, finding that Brahmin apparently repeatedly violated Section 73.49 of the Rules<sup>7</sup> by failing to enclose the KRAE antenna tower within an effective locked fence or other enclosure. In its *Response*, Brahmin requested a reduction of the proposed forfeiture based on its good faith efforts to repair the fence surrounding the KRAE antenna tower, and its history of compliance with the Commission's Rules.

5. In the *Forfeiture Order*, issued March 3, 2008, the Region considered Brahmin's *Response* and determined that Brahmin's efforts to repair the KRAE antenna tower fence after the March 6, 2007, inspection by the Denver agents did not support a good faith reduction, however, Brahmin's efforts to repair the fence prior to the inspection did support a good faith reduction.<sup>8</sup> Consequently, the Region reduced the forfeiture amount to \$5,600. The Region also determined that Brahmin had a history of compliance with the Commission's Rules, and further reduced the forfeiture amount to \$4,200.<sup>9</sup>

### III. DISCUSSION

6. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.<sup>10</sup> A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.<sup>11</sup> In its *Petition*, Brahmin asks that the forfeiture be reconsidered because the Brahmin employee responsible for the KRAE tower site underwent surgery around the same time that the KRAE fence fell into disrepair on February 20, 2007. This employee was recuperating until March 6, 2007, when the Denver agent inspected the tower site and discovered the issues with the KRAE fence. Brahmin argues that the Region did not take into account this "exculpatory factor" and that "the totality of the circumstances in the instant proceeding demonstrate that Brahmin does not bear culpability for the 73.49 violation."<sup>12</sup> We disagree.

7. Brahmin is the licensee of KRAE and as such is required to ensure that the KRAE tower

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<sup>6</sup> *NAL* at 1; *Response* Affidavit at 1.

<sup>7</sup> 47 C.F.R. § 73.49.

<sup>8</sup> *Forfeiture Order* at para. 7.

<sup>9</sup> *Forfeiture Order* at para. 8.

<sup>10</sup> See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, 15 FCC Rcd 18257 (EB 2000), citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>11</sup> *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257.

<sup>12</sup> *Petition* at 3.

“be enclosed within effective locked fences or other enclosures.”<sup>13</sup> Brahmin cannot avoid this responsibility when one of its employees falls ill.<sup>14</sup> The Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,<sup>15</sup> and has “consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.”<sup>16</sup> The Brahmin employee’s inability to work due to illness does not excuse Brahmin’s failure to maintain the KRAE tower fence, nor does it supply sufficient exculpatory evidence to relieve Brahmin of liability for the forfeiture. We find that the Region correctly reviewed and weighed all of the evidence presented by Brahmin and correctly reduced the proposed forfeiture amount because of Brahmin’s prior good faith efforts to secure the KRAE tower fence, and because of Brahmin’s history of compliance with the Commission’s Rules. Upon review of the evidence, and the totality of the circumstances involved, we find that Brahmin is not entitled to further reductions or to a dismissal of the forfeiture.

8. We have considered the arguments raised by Brahmin in its *Petition* and find they are unpersuasive. Therefore, we deny Brahmin’s *Petition*, and affirm the Region’s *Forfeiture Order* finding Brahmin liable for a forfeiture in the amount of \$4,200.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>17</sup> and Section 1.106 of the Commission’s Rules,<sup>18</sup> Brahmin Broadcasting Corporation’s *Petition for Reconsideration*, filed April 1, 2008, **IS DENIED**, and the Region’s *Forfeiture Order* **IS AFFIRMED**.

10. Payment of the forfeiture ordered by the Region and affirmed by this Memorandum Opinion and Order shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>19</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C.

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<sup>13</sup> 47 C.F.R. § 73.49.

<sup>14</sup> See *Jerry Russell d/b/a The Russell Company*, 22 FCC Rcd 9065 (EB 2007); *Claro Communications, LTD.*, 23 FCC Rcd 359 (EB 2008).

<sup>15</sup> See *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863 – 64 (2002).

<sup>16</sup> See *American Paging, Inc. of Virginia*, 12 FCC Rcd 10417, 10420 (Wireless Bur., Enf. and Cons. Inf. Div., 1997) (quoting *Triad Broadcasting Company, Inc.*, 96 FCC 2d 1235 (1984)).

<sup>17</sup> 47 U.S.C. § 405.

<sup>18</sup> 47 C.F.R. § 1.106.

<sup>19</sup> 47 U.S.C. § 504(a).

20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Brahmin Broadcasting Corporation shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

11. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Brahmin Broadcasting Corporation, at its address of record, and Barry A. Friedman, its counsel of record.

**FEDERAL COMMUNICATIONS COMMISSION**

George R. Dillon  
Associate Chief, Enforcement Bureau