

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

In the Matter of)	
)	
Mt. Rushmore Broadcasting, Inc.)	File Numbers: EB-08-DV-0166
)	EB-08-DV-0169
KRAL(AM))	
Rawlins, Wyoming)	NAL/Acct. No.: 200932800003
Facility ID # 46736)	FRN: 0008230559
)	
KIQZ(FM))	
Rawlins, Wyoming)	
Facility ID # 46737)	

FORFEITURE ORDER

Adopted: January 8, 2010

Released: January 8, 2010

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of seventeen thousand, five hundred dollars (\$17,500) to Mt. Rushmore Broadcasting, Inc. (“Mt. Rushmore”), licensee of stations KRAL(AM) and KIQZ(FM) serving Rawlins, Wyoming, for willful and repeated violation of Section 11.35(a) of the Commission’s Rules (“Rules”), Section 73.3526 of the Rules, and Sections 1.903(a), 1.947(a), and 74.532(e) of the Rules.¹ On December 10, 2008, the Enforcement Bureau’s Denver Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$20,000 to Mt. Rushmore for failing to ensure the operational readiness of the KRAL(AM) and KIQZ(FM) Emergency Alert System (“EAS”) equipment; for failing to maintain a complete public inspection file for KRAL(AM) and KIQZ(FM); and for failing to operate station WHB734, an aural studio-transmitter-link (“STL”), from its licensed location. In this *Order*, we consider Mt. Rushmore’s arguments that its violations were not willful, that the violations were corrected after the inspection took place, and that the violations were not discovered during a prior inspection.

II. BACKGROUND

2. On April 10, 2008, agents from the Enforcement Bureau's Denver District Office conducted an inspection of KRAL(AM) and KIQZ(FM) at the stations' main studio location of 2346 W. Spruce Street, in Rawlins, Wyoming. The inspection revealed that the EAS receive system utilized by both KRAL(AM) and KIQZ(FM) was not operational. The agents reviewed the KRAL(AM) and KIQZ(FM) EAS logs and observed that the all of the EAS entries were logged as Required Weekly Test (“RWT”) transmitted by KRAL(AM) and KIQZ(FM) from October 31, 2007 to April 1, 2008. In response to questions from the Denver agents, Mt. Rushmore staff stated that the station was only transmitting the RWT. The staff claimed their understanding of the EAS equipment testing requirements was to transmit the RWT once a week and make a log entry. Therefore, the station did not observe or log

¹ 47 C.F.R. §§ 11.35(a), 73.3526, 1.903(a), 1.947(a), and 74.532(e).

the reception of any EAS activations or test. A physical inspection of the EAS equipment showed no evidence from the EAS encoder/decoder's printouts of any EAS activations or test being received.

3. Also on April 10, 2008, the Denver agents inspected the aural studio-to-transmitter link ("STL"), call sign WHB734, operating on a center frequency of 950.000 MHz, from the Mt. Rushmore studio at 2346 Spruce Street in Rawlins, Wyoming. The coordinates of the Mt. Rushmore studio are approximately 41° 47' 04" north latitude, 107° 15' 49" west longitude. At the time of the inspection, station WHB734 was operating from these coordinates. According to the WHB734 station authorization, the licensed coordinates are 41° 47' 18.8" north latitude, 107° 14' 33.1" west longitude with a physical street address of 415 West Buffalo Street, in Rawlins, Wyoming.

4. On April 11, 2008, the Denver agents returned to the Mt. Rushmore studio. The agents suggested that the Mt. Rushmore manager contact the stations' primary (LP-1) and secondary (LP-2) assignments to request an EAS test. KRAL(AM) and KIQZ(FM) are located in Carbon County, Wyoming. According to the Wyoming State Plan for the Emergency Alert System at the time of the inspection, with the most recent update noted on May 25, 2007, the LP-1 and LP-2 assignments were KUWR-FM and NOAA, respectively.

5. The Denver agents also conducted an examination of the public inspection files for KRAL(AM) and KIQZ(FM) with the stations' manager on April 11, 2008. Among the items reviewed, the agents requested the quarterly radio issues/programs list for all quarters beginning from the term of the last renewal on October 1, 2005. The manager was unable to locate these items within the KRAL(AM) and KIQZ(FM) public inspection files.

6. When the inspections were completed on April 11, 2008, the agents reviewed the violations with the stations' manager. During the review, the agents informed the manager of the location violations found with the WHB734 station license. The manager stated that the WHB734 STL had been relocated from the 415 West Buffalo Street studio location to the 2346 Spruce Street Studio more than a year prior to the inspection. On April 11, 2008, station WHB734 continued transmitting on a center frequency of 950.000 MHz.

7. On December 10, 2008, a review of the Commission's databases reflected neither a change in the coordinates nor a change in the fixed location address for station WHB734. Additionally, there were no applications pending in the system for modifications to correct the licensing errors the agents communicated to Mt. Rushmore.

8. On December 10, 2008, the Denver Office issued a *NAL* in the amount of \$20,000 to Mt. Rushmore.² In the *NAL*, the Denver Office found that Mt. Rushmore apparently willfully and repeatedly violated Section 11.35(a) of the Rules by failing to ensure the operational readiness of the KRAL(AM) and KIQZ(FM) EAS equipment; Section 73.3526 of the Rules, by failing to maintain a complete public inspection file for KRAL(AM) and KIQZ(FM); and Sections 1.903(a), 1.947(a), and 74.532(e) of the Rules by failing to operate station WHB734 from its licensed location.³ Mt. Rushmore filed a response ("*Response*") to the *NAL* on January 15, 2009. In its *Response*, Mt. Rushmore argues that its violations were not willful, that the violations were corrected after the inspection took place, and that the violations were not discovered during a prior inspection.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932800003 (Enf. Bur., Western Region, Denver Office, released December 10, 2008).

³ 47 C.F.R. §§ 11.35(a), 73.3526, 1.903(a), 1.947(a), and 74.532(e).

III. DISCUSSION

9. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

10. The Rules provide that every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.⁸ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.⁹ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.¹⁰ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation's emergency warning system, the EAS is critical to public safety. Broadcasters play a vital role in ensuring the success of the EAS. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees.

11. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders and Attention Signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Broadcast stations must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station's log why any required tests were not received and when defective equipment is removed and restored to service.¹¹ Section 11.52(d) of the Rules requires broadcast stations to monitor at least two EAS sources.¹² The monitoring assignments of each broadcast station are specified in the State EAS Plan and FCC Mapbook. The requirement that stations monitor at least two EAS sources ensures redundancy of the EAS system in the event one of the sources fails. Section 11.61(a)(1) and (2) of the Rules requires broadcast stations to (a) receive monthly EAS tests from

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. §§ 11.11 and 11.41.

⁹ 47 C.F.R. §§ 11.1 and 11.21.

¹⁰ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

¹¹ 47 C.F.R. § 11.35(a) and (b).

¹² 47 C.F.R. § 11.52(d).

designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.¹³ The requirement that stations monitor, receive and retransmit the required EAS tests ensures the operational integrity of the EAS system in the event of an actual disaster. Appropriate entries must be made in the broadcast station log as specified in Sections 73.1820 and 73.1840, indicating reasons why any tests were not received or transmitted.¹⁴ On April 11, 2008, the inspection and investigation by the Denver agents revealed that the EAS equipment for KRAL(AM) and KIQZ(FM) was apparently not operational because no evidence was found demonstrating the functionality of the equipment to receive tests and alerts from the assigned EAS LP-1 and LP-2 stations. Mt. Rushmore staff acknowledged that the stations did not utilize the EAS equipment to receive the required RMTs. Additionally, Mt. Rushmore failed to document in the EAS logs the lack of functionality of the EAS equipment for receipt of EAS transmissions.

12. Mt. Rushmore argues that this violation, along with the other violations, was not willful because Mt. Rushmore relied on a manager “who was not being truthful” and who was later terminated by Mt. Rushmore. Mt. Rushmore further argues that the Commission should hold the manager, and not Mt. Rushmore, liable for the forfeiture amount. We find no merit to these arguments. The Commission has long held that “licensees are responsible for the acts and omission of their employees and independent contractors,”¹⁵ and has consistently “refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations.”¹⁶ Mt. Rushmore also argues that it fixed the EAS issues immediately after the inspection. We note that this does not provide a basis for a downward adjustment in the proposed forfeiture, as the Commission has stated in the past that a licensee is expected to correct errors when they are brought to the licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture.¹⁷

13. Section 73.3526(a)(2) of the Rules requires that every licensee of an AM and FM station licensee shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraphs (e)(12) through (e)(14) of this section as well as paragraph (e)(16) of this section.¹⁸ Further, as required by Section 73.3526(b), the public inspection file shall be maintained at the station’s main studio location.¹⁹ Section 73.3526(e)(12) of the Rules requires licensees to place in their public inspection file, for each calendar quarter, a list of programs that have

¹³ 47 C.F.R. § 11.61. The required monthly and weekly tests are required to conform to the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055 (2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt).

¹⁴ 47 C.F.R. §§ 73.1820 and 73.1840.

¹⁵ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) (“*Eure*”); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972); *see also, Rama Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 18209, 18211 (EB 2008) (“[W]here lapses in compliance occur, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee’s rule violation.”)

¹⁶ *See Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

¹⁷ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002); *see supra Rama Communications, Inc.*

¹⁸ 47 C.F.R. § 73.3526(a)(2).

¹⁹ 47 C.F.R. § 73.3526(b).

provided the station's most significant treatment of community issues during the preceding three month period.²⁰ This list is known as the radio issues/programs list and copies of the lists must be maintained in the file until final action has been taken on the station's next renewal application. The public inspection files for KRAL(AM) and KIQZ(FM) were missing quarterly radio issues/program lists for all quarters during the license term, which began on October 1, 2005. Therefore, Mt. Rushmore failed to comply with Section 73.3526(e)(12) of the Rules. Mt. Rushmore was aware of the requirement to have a complete public inspection file for KRAL(AM) and KIQZ(FM) given its response in the renewal applications, FCC Form 303-S, filed June 1, 2005.²¹ In Section III, Question 3, for each station, Mt. Rushmore certified that the public inspection file had the proper documentation as required by Section 73.3526. The station manager indicated he did not know the whereabouts of the material missing from the public inspection files, and no evidence could be found that the missing material was ever in place.

14. Mt. Rushmore argues that this violation is also the fault of its manager who "simply panicked," did not know where the public file was, and failed to contact the employee who was responsible for the public file. Mt. Rushmore states that the file was actually complete and that a copy, along with an affidavit, could be sent to the Commission for verification. According to the Denver agents, however, the Mt. Rushmore manager did telephone and consult with the employee who was responsible for the public inspection file several times during the inspection. Reductions based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation.²² We accept Mt. Rushmore's explanation concerning the misplacement of the issues/programs lists and, consequently, we find that Mt. Rushmore's efforts warrant a good faith reduction of the proposed forfeiture amount and we reduce the proposed forfeiture from \$8,000 to \$5,500. We decline, however, to cancel the forfeiture because, the issue/programs lists were not available for inspection by either the Denver agents or the public, on the day of the inspection.²³

15. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.²⁴ Section 1.947(a) of the Rules requires that all major modifications as defined in Section 1.929 of the Rules require prior Commission approval.²⁵ Section 1.929(d)(1)(i) of the Rules defines one of the major actions as "any change in transmit antenna location by more than 5 seconds in latitude or longitude for fixed point-to-point facilities."²⁶ Section 74.532(e) of the Rules states that each aural broadcast auxiliary station will be licensed at a specified transmitter location to communicate with a specified receiving location, and the direction of the main radiation lobe of the transmitting antenna will be a term of the station authorization.²⁷ At the time of the inspection on

²⁰ 47 C.F.R. § 73.3526(e)(12).

²¹ See Mt. Rushmore's renewal applications for KRAL(AM) and KIQZ(FM), File Nos. BR-200500601BCT and BRH-20050601BCQ, respectively. Both applications were granted on September 28, 2005.

²² See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

²³ See *Lazer Licenses, LLC*, 23 FCC Rcd 2589 (EB 2008).

²⁴ 47 C.F.R. § 1.903(a).

²⁵ 47 C.F.R. § 1.947(a).

²⁶ 47 C.F.R. § 1.929(d)(1)(i).

²⁷ 47 C.F.R. § 11.35(a), 73.3526, 1.903(a), 1.947(a) and 74.532(e).

April 10, 2008, Mt. Rushmore was found operating radio station WHB734 from a location inconsistent with the station's authorized coordinates and street address. The distance separating the point of operation from that of the license was greater than 1.1 miles (specifically, a difference of approximately 15 seconds of latitude and approximately 76 seconds of longitude). The licensee's station manager acknowledged the licensing inaccuracies, noting that station WHB734 had been operating from this location for over a year.

16. Mt. Rushmore does not deny that WHB734 was operating from an incorrect location. Instead, Mt. Rushmore argues that studio location had not changed since Mt. Rushmore purchased the station in 1993, and that it assumed that the actual location of WHB734 was "very close" to its prior location, which is the location listed on its license. It also argues that a prior inspection by the Denver Office in 1998 did not mention this violation. We find no reason to reduce the proposed forfeiture amount for this violation. We note that Mt. Rushmore is a Commission licensee and is responsible for knowing and complying with the terms of its authorization and the Act and the Rules.²⁸ We also note that the fact that a prior inspection did not reveal the violation does not excuse the violation.²⁹ Also, despite Mt. Rushmore's assurance that it was making a filing to amend the license, no such filing has been made, and Mt. Rushmore continues to operate WHB734 more than one mile from its licensed location. We therefore decline to decrease the forfeiture amount and we order Mt. Rushmore to file a report with the Denver Office detailing its compliance with the location requirements in its license, WHB734, and this *Order* within 30 days of the date of this *Order*.

17. Mt. Rushmore also requests a 50% reduction of the proposed forfeiture because the AM/FM simulcast stations purportedly are failing. However, Mt. Rushmore did not submit the documentation, including three years of tax returns, to support an inability to pay claim. Therefore, no reduction for inability to pay is warranted.

18. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Mt. Rushmore willfully and repeatedly violated Sections 1.903(a), 1.947(a), 11.35(a), 73.3526, and 74.532(e) of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$17,500 is warranted.

IV. ORDERING CLAUSES

19. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Mt. Rushmore Broadcasting, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$17,500 for willfully and repeatedly violating Sections 1.903(a), 1.947(a), 11.35(a), 73.3526, and 74.532(e) of the Rules.³⁰

20. **IT IS FURTHERED ORDERED THAT**, within 30 days of the release of this *Order*, Mt. Rushmore Broadcasting, Inc., file with the District Director, Denver Office, the report required in

²⁸ See *Discussion Radio Incorporated*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7437 (2004). We note that the license for WHB734 expressly lists the fixed address as 415 West Buffalo, which is not where the station is located.

²⁹ *J.B. McNutt*, 37 FCC 2d 432 (1972). The 1998 inspection of KRAL and KIQZ focused on the stations' EAS equipment and determined that Mt. Rushmore violated the EAS rules. See *Mount Rushmore Broadcasting, Inc.*, 13 FCC Rcd 5265 (CIB 1998)

³⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a), 1.947(a), 11.35(a), 73.3526, 74.532(e).

paragraph 16 above.

21. Payment of the forfeiture 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.³¹ 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. 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. Mount Rushmore Broadcasting, Inc., will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

22. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Mt. Rushmore Broadcasting, Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

³¹ 47 U.S.C. § 504(a).