

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

In the Matter of	)	
	)	Facility I.D. No. 68717
<b>Rocky Mountain Broadcasting Company</b>	)	NAL/Acct. No. 0741420004
	)	FRN: 0003710407
Licensee of Station KMTF(TV)	)	
Helena, Montana	)	

**FORFEITURE ORDER**

**Adopted: May 19, 2010**

**Released: May 21, 2010**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of three thousand and two hundred dollars (\$3,200) to Rocky Mountain Broadcasting Company (the “Licensee”), licensee of Station KMTF(TV), Helena, Montana, for its willful and repeated violation of: Section 73.3526(e)(11)(ii) of the Commission’s Rules (“Rules”), by failing to place in the station’s public inspection file all required records concerning its compliance with the children’s programming commercial limits;<sup>1</sup> Section 73.3526(e)(11)(iii) of the Rules by failing to publicize the existence and location of the Station’s Children’s Television Programming Reports; and Section 73.673 of the Rules by failing to provide to publishers of program guides information identifying the Station’s programs that were specifically designed to educate and inform children.

**II. BACKGROUND**

2. On December 1, 2005, Licensee filed the above-captioned license renewal application (FCC Form 303-S) for Station KMTF(TV) (the “Application”). File No. BRCT-20051201CIX. In response to Section IV, Question 3 of the Application, the licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Rules. In Exhibit 17, Licensee indicated that in reviewing the public inspection file in preparation for filing the Application, it discovered that records concerning compliance with the commercial limits in children’s programming for the third quarter of 2000 through the second quarter of 2001, and the fourth quarter of 2002 were missing. The Licensee claimed that all of these documents were placed in the public file in November 2005.

3. In response to Section IV, Question 10 of the Application, Licensee stated that, it had failed to publicize the existence and location of the Station’s Children’s Television Programming Reports, as set forth in Section 73.3526(e)(11)(iii) of the Rules. In Exhibit 24, it indicated that, it publicized the existence and location of the Station’s Children’s Television Programming Reports “from the August 15, 1998 sign-on through October of 1999.” Licensee claimed that the time broker of the Station changed in October 1999. It stated that although the new time broker claimed that it had publicized the existence and location of the Station’s Children’s Television Programming Reports, it was “only able to find a record of

<sup>1</sup> See 47 C.F.R. § 73.3526(e)(11)(ii).

one airing of the Children's Program Report location between October of 1999 and June of 2001.' Licensee reported that in July 2001, the network affiliation was changed, and that the existence and location of the Station's Children's Television Programming Reports was publicized from July 2001 throughout the remainder of the license term.

4. In response to Section IV, Question 9 of the Application, Licensee stated that, the Station failed to provide information identifying each core program aired on its station, including an indication of the target child audience, to publishers of program guides. In Exhibit 23, the licensee indicated that for approximately one year and a half, it did not provide this information to program guide publishers. Licensee asserted that although this information had previously been submitted to program guide publishers, it was omitted from program schedule publications after its affiliation change in July 2001. Licensee claimed that personnel responsible for submitting such information believed that its new affiliate was providing the information to program guide publishers and that personnel only learned of the omission in January 2003. The licensee reported that it provided the required information to publishers of program guides when it discovered the error.

5. On April 30, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of four thousand dollars (\$4,000) to Licensee for the Station's violations.<sup>2</sup> On May 30, 2007, Licensee filed a Response In Opposition to the Notice of Apparent Liability for Forfeiture ("Response") requesting that the forfeiture be rescinded in its entirety. As noted below, LICENSEE argues that: (1) the proposed forfeiture is unjustified; (2) the violations were neither willful nor repeated; and (3) the licensee "has no history of prior violations of any kind."<sup>3</sup>

### III. DISCUSSION

6. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the Commission's *Forfeiture Policy Statement*.<sup>6</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we 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 such other matters as justice may require.<sup>7</sup>

7. Licensee does not dispute that it failed to publicize for the public the existence and location of the Station's Children's Television Programming Reports, or that it failed to identify for publishers of program guides the age group for which its children's programming is targeted. However, it requests that the forfeitures be cancelled. Licensee argues that the violations were unintentional and resulted from oversight.<sup>8</sup> It also argues that the Commission incorrectly characterized the violation for the missing file documents as willful and repeated acts of the licensee. In this regard, Licensee states that its acts were neither conscious nor deliberate, but, rather, a misunderstanding of the rules and, partially, a failure of its time broker for errors in publicizing its children's programming. Moreover, it argues that the "repeat nature was all part of one misunderstanding, i.e., the mistake was committed only until it was

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 0741420004, DA 07-1452 (MB rel. April 30, 2007).

<sup>3</sup> Response at 2.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). ("Forfeiture Policy Statement").

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> Response at 5.

discovered, then it was corrected.”<sup>9</sup> Licensee further argues that the Station’s compliance with these requirements during the remainder of the license term -- after Station personnel became aware of the oversights – demonstrate that it intended to comply with the children’s programming rules.<sup>10</sup>

8. Licensee also states that although the proposed forfeiture was modified downward, the Commission did not fully consider other relevant factors in assessing that forfeiture. It maintains that it complied with appropriate commercial limitations and programming requirements, but merely failed to place certifications thereof in its public file. As such, it argues that because the violations of Section 73.3526 of the Commission’s Rules were minor, “no harm was caused to anyone by the violations,” the licensee voluntarily disclosed and immediately fixed the problems, and the licensee did not profit or receive any benefit as a result of the violations, “it should be given the benefit of the doubt in the assessment of blame.”<sup>11</sup> Finally, it states that the “Licensee has no history of prior violations of any kind, let alone of Section 73.3526.”<sup>12</sup> For these reasons, Licensee asserts that full elimination of the proposed forfeiture is justified.

9. Initially, we reject Licensee’s assertions that its rule violations were neither willful nor repeated. As explained in the NAL, Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>13</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>14</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>15</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>16</sup> In the context of a forfeiture action, “willful” does not require a finding that the rule violation was intentional. Rather, the term “willful” means that the violator knew that it was taking (or in this case, not taking) the action in question, irrespective of any intent to violate the Rules.<sup>17</sup> Further, the Commission has held that violations resulting from inadvertent error or failure to become familiar with the FCC’s requirements are willful violations.<sup>18</sup>

10. We also reject Licensee’s arguments that its forfeiture should be cancelled because of its self-disclosure and good faith efforts to comply with FCC rules and requirements. Although Licensee admitted to these rule violations, it did so only in the context of the question contained in its license

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<sup>9</sup> *Id.*, at 2.

<sup>10</sup> *Id.*, at 3.

<sup>11</sup> *Id.*, at 5-6.

<sup>12</sup> *Id.*

<sup>13</sup> 47 U.S.C. § 312(f)(1).

<sup>14</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>15</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992)(“*Southern California*”).

<sup>16</sup> 47 U.S.C. § 312(f)(2).

<sup>17</sup> See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee’s administrative error); *Southern California*, 6 FCC Rcd at 4387.

<sup>18</sup> See *Southern California*, 6 FCC Rcd at 4387 (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

renewal application that compelled such disclosure. Further, while we recognize that Licensee began complying with the appropriate rule sections in question as soon as it discovered the violations, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>19</sup>

11. Finally, we reject Licensee's argument that its forfeiture should be cancelled because it has no history of prior violations of FCC requirements generally and regarding children's programming specifically. However, given Licensee's history of compliance with the rules, we reduce the forfeiture amount to \$3,200.<sup>20</sup>

12. We have considered Licensee's Response in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully and repeatedly violated Sections 73.3526 and 73.673 of the Rules as set forth in the NAL.

#### IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>21</sup> that Rocky Mountain Broadcasting Company, SHALL FORFEIT to the United States the sum of \$3,200 for willfully and repeatedly violating Sections 73.3526(e)(11)(iii) and 73.673 of the Commission's Rules.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture 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>22</sup> Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at 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, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If 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).<sup>23</sup>

15. Licensee requests for full payment of the forfeiture under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12 Street, S.W., Room 1-A625,

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<sup>19</sup> *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)).

<sup>20</sup> See, e.g. *Metropolitan School District of Washington Township*, Forfeiture Order, 23 FCC Rcd 9995 (MB 2008) (reducing forfeiture amount based on licensee's history of compliance); *Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 362 (EB 2008) (same); *Traffic Control Products of Florida, Inc.*, Forfeiture Order, 23 FCC Rcd 5452, 5454 (EB 2008) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>22</sup> 47 U.S.C. § 504(a).

<sup>23</sup> See 47 C.F.R. § 1.1914.

Washington, D.C. 20554.<sup>24</sup>

16. IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Rocky Mountain Broadcasting Company, 455 Capitol Mall, Suite 210, Sacramento, California 95814, and to its counsel, Suzanne E. Rogers, 455 Capitol Mall, Suite 210, Sacramento, California 95814.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>24</sup> *Id.*