

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

In the Matter of )
Mt. Rushmore Broadcasting, Inc. )
Licensee of Station KRAL(AM) )
Rawlins, Wyoming )
Facility ID # 46736 )
Station KIQZ(FM) )
Rawlins, Wyoming )
Facility ID # 46737 )
Station WHB734 )
Rawlins, Wyoming )
File Numbers: EB-08-DV-0166
EB-08-DV-0169
NAL/Acct. No.: 200932800003
FRN: 0008230559

MEMORANDUM OPINION AND ORDER

Adopted: September 12, 2011

Released: September 13, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order ("MO&O"), we deny the petition for reconsideration ("Petition") filed by Mt. Rushmore Broadcasting, Inc., ("Mt. Rushmore" or "the Licensee"), licensee of Stations KRAL(AM), KIQZ(FM), and WHB734, in Rawlins, Wyoming, of the Forfeiture Order issued in this proceeding. The Forfeiture Order imposed a monetary forfeiture in the amount of \$17,500 for willful and repeated violation of sections 1.903(a), 1.947(a), 11.35(a), 73.3526, and 74.532(e) of the Commission's rules ("Rules").

II. BACKGROUND

2. In the Forfeiture Order, issued January 8, 2010, the Western Region of the Enforcement Bureau ("Region") determined that Mt. Rushmore had failed to ensure the operational readiness of the Station KRAL(AM) and Station KIQZ(FM) Emergency Alert System ("EAS") equipment;

1 See Mt. Rushmore Broadcasting, Inc., Petition for Reconsideration (filed February 12, 2010) ("Petition"). We note that while the Petition was filed more than 30 days after the release of the Forfeiture Order it is nonetheless timely as filing deadlines that fell between February 5, 2010 and February 12, 2010 were extended until February 16, 2010 due to the closing of the FCC during that period for adverse weather conditions in Washington, D.C. See Waiver of Filing Deadlines Due to Adverse Weather Conditions, Public Notice, 2010 WL 539540 (rel. February 16, 2010).

2 Mt. Rushmore Broadcasting, Inc., Forfeiture Order, 25 FCC Rcd 95 (Enf. Bur. Western Region 2010) ("Forfeiture Order"), aff'g Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200932800003 (Enf. Bur., Western Region, Denver District Office, rel. December 10, 2008) ("NAL").

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

4 47 C.F.R. § 11.35(a); Forfeiture Order, 25 FCC Rcd at 98.

maintain a complete public inspection file for Station KRAL(AM) and Station KIQZ(FM);<sup>5</sup> and failed to operate Station WHB734, an aural studio-transmitter-link (“STL”), from its licensed location.<sup>6</sup> The Region found no merit to Mt. Rushmore’s arguments that its violations were not willful and that the forfeiture amount proposed in the *NAL* should be reduced because Mt. Rushmore had relied on an employee who was not candid with the station owner and who was subsequently terminated.<sup>7</sup> The Region stated, “[t]he Commission has long held that ‘licensees are responsible for the acts and omissions of their employees and independent contractors.’”<sup>8</sup> The Region also found no merit to Mt. Rushmore’s argument that a downward adjustment was appropriate because Mt. Rushmore corrected the EAS issues at the stations immediately after the inspection. The Region determined that the Commission has held that “a licensee is expected to correct errors when they are brought to a licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture.”<sup>9</sup> The Region accepted Mt. Rushmore’s explanation, however, concerning the misplacement of the issues/programs lists and found that Mt. Rushmore’s efforts warranted a good faith reduction of the proposed forfeiture amount for that violation from \$8,000 to \$5,500, and included this adjustment in the January 2010 *Forfeiture Order*.<sup>10</sup>

3. At the same time, the Region found no grounds to reduce the proposed forfeiture concerning Mt. Rushmore’s failure to operate Station WHB734 from its licensed location. Specifically, the Region found inapposite Mt. Rushmore’s claim that a previous inspection by the Bureau’s Denver Office did not identify this violation, finding that because Mt. Rushmore is a Commission licensee, it is responsible for knowing and complying with the terms of its authorization and the Rules.<sup>11</sup> The Region also declined to reduce the forfeiture by 50%, as requested by Mt. Rushmore, because Mt. Rushmore failed to submit the required financial documentation (*e.g.* three years of tax returns) to support an inability to pay claim.<sup>12</sup>

### III. DISCUSSION

4. Reconsideration is appropriate only where the petitioner either demonstrates a material

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<sup>5</sup> 47 C.F.R. § 73.3526; *Forfeiture Order*, 25 FCC Rcd at 99.

<sup>6</sup> 47 C.F.R. §§ 1.903(a), 1.947(a), 74.532(e); *Forfeiture Order*, 25 FCC Rcd at 100.

<sup>7</sup> *Id.*, 25 FCC Rcd at 98 (quoting *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002); citing *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972); *Rama Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 18209, 18211 (Enf. Bur. 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.”)).

<sup>8</sup> *Forfeiture Order*, 25 FCC Rcd at 98.

<sup>9</sup> *Id.* at 99 (citing *AT&T Wireless Services, Inc.* Forfeiture Order, 17 FCC Rcd 21866, 21871-76 (2002)).

<sup>10</sup> *Forfeiture Order*, 25 FCC Rcd at 99 (citing *Radio One Licenses, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15964, 15965 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003); *Lazer Licenses, LLC*, Forfeiture Order, 23 FCC Rcd 2589 (Enf. Bur. 2008)).

<sup>11</sup> *Forfeiture Order*, 25 FCC Rcd at 100 (citing *Discussion Radio Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7437 (2004)). The prior inspection of Stations KRAL(AM) and KIQZ(FM) by the Denver District Office occurred in 1998 and was a targeted EAS inspection that resulted in findings of violations of the EAS rules by Mt. Rushmore. See *Mount Rushmore Broadcasting, Inc.*, Forfeiture Order, 13 FCC Rcd 5265 (CIB 1998).

<sup>12</sup> *Forfeiture Order*, 25 FCC Rcd at 100.

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>13</sup> A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.<sup>14</sup>

5. Mt. Rushmore does not dispute the facts as detailed in the *NAL* or the *Forfeiture Order*, and thus the facts established in those decisions are incorporated herein by reference.<sup>15</sup> Mt. Rushmore again requests that the forfeiture be cancelled or substantially reduced and reiterates all of the arguments previously considered and rejected by the Region,<sup>16</sup> as described above.<sup>17</sup> In addition, Mt. Rushmore again asks for a reduction based on its asserted inability to pay the forfeiture amount, but again submits no financial information about its overall operations supporting its request.<sup>18</sup>

6. We find that the Region has already considered and properly disposed of the issues raised by Mt. Rushmore in its Petition by appropriate application of Commission precedent. The Licensee has failed to either demonstrate error or to present new facts or changed circumstances, as required. We further find that because Mt. Rushmore has provided no financial documentation of its overall operations to support its request for reduction of the forfeiture amount based on its inability to pay, we cannot consider its request. Therefore, we find that Mt. Rushmore's *Petition* provides no basis for reduction or cancellation of the monetary forfeiture assessed against the Licensee, and we affirm the *Forfeiture Order*.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to section 405 of the Communications Act of 1934, as amended,<sup>19</sup> and section 1.106 of the Rules,<sup>20</sup> that the *Petition for Reconsideration* filed by Mt. Rushmore Broadcasting, Inc., **IS DENIED** and the *Forfeiture Order* **IS AFFIRMED**.

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<sup>13</sup> See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257 (Enf. Bur. 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>14</sup> *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257.

<sup>15</sup> In its *Petition*, Mt. Rushmore also describes its efforts to remedy a violation of section 73.49 of the Rules, 47 C.F.R. § 73.49, concerning a broken fence surrounding one of its AM towers, in response to a call from FCC agents. *Petition* at 3 – 4. As that violation was not charged in this proceeding, we see no relevance to this new information, other than to remind Mt. Rushmore, as the Region did, that as a licensee it is expected to comply with the Rules. *Forfeiture Order*, 25 FCC Rcd at 100.

<sup>16</sup> Although Mt. Rushmore acknowledges that the Region made a downward adjustment of the proposed forfeiture for its public inspection file violation, from \$8,000 to \$5,500, for Mt. Rushmore's good faith effort to comply with section 73.3526 of the Rules, Mt. Rushmore argues that the assessed \$5,500 forfeiture should be further reduced for the same reasons that Mt. Rushmore previously argued to the Region – that the station manager mishandled the inspection and should have contacted the Mt. Rushmore staff responsible for the public inspection file on the day of the inspection. The Region found that the manager did contact the staff member responsible for the public inspection file several times during the inspection; however, the missing issues and programs lists could not be produced. *Forfeiture Order*, 25 FCC Rcd at 99. The public inspection files for Station KRAL(AM) and Station KIQZ(FM) were missing quarterly radio issues/program lists for all quarters during the license term, which began on October 1, 2005.

<sup>17</sup> See *Petition* at 2 -5.

<sup>18</sup> See *id.* at 4 -5.

<sup>19</sup> 47 U.S.C. § 405.

<sup>20</sup> 47 C.F.R. § 1.106.

8. **IT IS ALSO ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.311 and 1.80(f)(4) of the Rules, Mt. Rushmore Broadcasting, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seventeen thousand, five hundred dollars (\$17,500) for violations of sections 1.903(a), 1.947(a), 11.35(a), 73.3526, and 74.532(e) of the Commission's rules.<sup>21</sup>

9. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within thirty (30) days of the release of this Memorandum Opinion and 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 forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN 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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Mt. Rushmore Broadcasting, Inc., shall also send electronic notification to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov) on the date said payment is made.

10. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both regular mail and by certified mail, return receipt requested, to Mt. Rushmore Broadcasting, Inc., 2346 West Spruce Street, Rawlins, Wyoming, 82301, and Lee J. Peltzman, Shainis & Peltzman, Chartered, 1850 M Street, N.W., Suite 240, Washington, D.C. 20036, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

<sup>21</sup> 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).

<sup>22</sup> 47 U.S.C. § 504(a).