

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

In the Matter of)	
)	
Mt. Rushmore Broadcasting, Inc.)	File No.: EB-FIELDWR-12-00002388
)	NAL/Acct. No.: 201232800004
Licensee of Station KMLD(FM) and)	FRN: 0008230559
Station WLP722)	Facility ID No.: 11927
Casper, Wyoming)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 25, 2012

Released: July 26, 2012

By the District Director, Denver Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Mt. Rushmore Broadcasting, Inc. (Mount Rushmore), licensee of Station KMLD(FM) in Casper, Wyoming, apparently willfully and repeatedly violated Section 1.903(a) of the Commission's rules (Rules),¹ by operating a studio-transmitter link (STL) at a location not authorized by its license. We conclude that Mt. Rushmore is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000). In addition, we direct Mount Rushmore to submit, no later than thirty (30) calendar days from the date of this NAL, a statement, signed under penalty of perjury, attesting to its compliance with the Commission's licensing requirements for the STL.²

II. BACKGROUND

2. On Wednesday, August 17, 2011, an agent from the Enforcement Bureau's Denver Office (Denver Office) conducted an inspection of Station KMLD(FM) and its associated STL, Station WLP722. The agent monitored Station WLP722 operation on its authorized frequency 946.0 MHz from the Station KMLD(FM) main studio, located at 218 N. Wolcott Street, Casper, Wyoming. According to the Station WLP722 authorization, the STL is licensed to operate at 150 N. Nichols Street, Casper, Wyoming, approximately 0.3 miles from its current location.

3. On December 23, 2011, the Denver Office issued a Letter of Inquiry (LOI) to Mount Rushmore requesting additional details regarding the license and operation of the Station KMLD(FM) STL.³ After multiple extensions, Mount Rushmore responded on April 11, 2012.⁴ In the *LOI Response*, Mount

¹ 47 C.F.R. § 1.903(a).

² 47 C.F.R. § 1.903(a).

³ See Letter of Inquiry from Nikki P. Shears, District Director, Denver Office, Western Region, FCC Enforcement Bureau, to Mt. Rushmore Broadcasting, Inc. (Dec. 23, 2011) (on file in EB-FIELDWR-12-00002388).

⁴ See Letter from Lee J. Peltzman, Esquire, Counsel for Mt. Rushmore Broadcasting, Inc., to Nikki P. Shears, District Director, Denver Office, Western Region, FCC Enforcement Bureau (filed Apr. 11, 2012) (on file in EB-FIELDWR-12-00002388) (*LOI Response*).

Rushmore stated that the STL had been in operation as the primary delivery mechanism for Station KMLD(FM) programming since August 31, 2001, and that an application to change the location of Station WLP722 should have been filed when Station KMLD moved its main studio in “late 2001 or early 2002” but could not produce a valid FCC authorization for the STL.⁵ On May 24, 2012, Mount Rushmore filed an application with the Commission to modify the Station WLP722 license to reflect the station’s current location.⁶

III. DISCUSSION

4. Section 503(b) of the of the Communications Act of 1934, as amended (Act), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁷ 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.⁸ 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,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹¹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹²

A. Operation at an Unauthorized Location

5. The evidence in this case is sufficient to establish that Mount Rushmore violated Section 1.903(a) of the Rules. 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.¹³ At the time of the August 17, 2011, inspection,

⁵ *LOI Response*, Jan Gray Declaration at 4.

⁶ See File No. 0005232128, submitted May 24, 2012 (Station WLP722 Modification Application). As of the date of this NAL, the Station WLP722 Modification Application remains pending.

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 312(f)(1).

⁹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”).

¹⁰ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹¹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹² Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹³ 47 C.F.R. § 1.903(a).

Mount Rushmore was operating Station WLP722, the Station KMLD(FM) STL at a location approximately 0.3 miles from its authorized location. Mount Rushmore acknowledges the continuous operation of Station WLP722 at this location since August 31, 2001, but is unable to provide any evidence of a Commission authorization for operation at this location. Based on the evidence before us, we find that Mount Rushmore apparently willfully and repeatedly violated Section 1.903(a) of the Rules by operating Station WLP722 at allocation not authorized on its license.

B. Proposed Forfeiture Amount and Reporting Requirement

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation at an unauthorized location is \$4,000.¹⁴ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.¹⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we find no downward adjustments are warranted, but conclude that an upward adjustment is warranted because of the long duration of Mount Rushmore's operation of the Station WLP722 at a location not authorized on its license.¹⁶ Accordingly, we propose a forfeiture amount of \$8,000 rather than the base forfeiture amount to Mount Rushmore for its prolonged operation of the Station KMLD(FM) STL at an unauthorized location. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mount Rushmore is apparently liable for a total forfeiture in the amount of eight thousand dollars (\$8,000).

7. We further order Mount Rushmore to submit a written statement, pursuant to Section 1.16 of the Rules, signed under penalty of perjury by an officer or director of Mount Rushmore, stating that it is operating Station KMLD(FM) and Station WLP722 in compliance with Section 1.903(a) of the Rules,¹⁷ and detailing the specific actions taken by Mount Rushmore to come into compliance. This statement must be provided to the Denver Office at the address listed in paragraph 10 within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Mt. Rushmore Broadcasting, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violation of Section 1.903(a) of the Rules.¹⁸

¹⁴ *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) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ See 47 C.F.R. § 1.80(b)(5), Note to Paragraph (b)(5): Section II. Adjustment Criteria for Section 503 Forfeitures (establishing "repeated or continuous violation" as an upward adjustment factor). We also note that Mount Rushmore has previously been assessed a forfeiture for violating Section 301 of the Act by operating an unlicensed STL. See *Mount Rushmore Broadcasting, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 19804 (Enf. Bur. 2003) (forfeiture paid).

¹⁷ 47 C.F.R. § 1.903(a).

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 1.903(a).

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Mt. Rushmore Broadcasting, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that Mt. Rushmore Broadcasting, Inc., **SHALL SUBMIT** a written statement, as described in paragraph 7, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Denver District Office, 215 S. Wadsworth Blvd., Suite 303, Lakewood, Colorado 80226. Mt. Rushmore shall also e-mail the written statement to WR-Response@fcc.gov.

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Mt. Rushmore Broadcasting, Inc., shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁰ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁰ See 47 C.F.R. § 1.1914.

to Sections 1.16 and 1.80(f)(3) of the Rules.²¹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Denver District Office, 215 S. Wadsworth Blvd., Suite 303, Lakewood, Colorado 80226, and include the NAL/Acct. No. referenced in the caption. Mt. Rushmore Broadcasting, Inc., also shall email the written response to WR-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail to Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail to Mt. Rushmore Broadcasting, Inc., at 218 N. Wolcott Street, Casper, Wyoming 82601-1923, and to its counsel, Lee J. Peltzman, Esq., Shainis & Peltzman, Chartered, 1850 M Street, NW, Suite 240, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears
District Director
Denver Office
Western Region
Enforcement Bureau

²¹ 47 C.F.R. §§ 1.16, 1.80(f)(3).