

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

In the Matter of)	
)	
Mt. Rushmore Broadcasting, Inc.)	File No.: EB-FIELDWR-12-00002409
)	NAL/Acct. No.: 201232800006
Licensee of Station KHOC(FM))	FRN: 0008230559
Casper, Wyoming)	Facility ID No.: 15925
)	

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 KHOC(FM) in Casper, Wyoming, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating a studio-transmitter link (STL) without an authorization. We conclude that Mt. Rushmore is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000). 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 KHOC(FM) and its associated STL (Station KHOC(FM) STL). The agent monitored the Station KHOC(FM) STL operation on frequency 944.5 MHz from the station’s main studio. An on-scene query of the Commission’s databases showed no license issued to Mount Rushmore for an STL on frequency 944.5 MHz in Casper, WY, and Mount Rushmore was unable to produce a Commission authorization for its the operation of the Station KHOC(FM) STL.

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 KHOC(FM) STL.³ After multiple extensions, Mount Rushmore responded on April 11, 2012.⁴ In the *LOI Response*, Mount Rushmore stated that the STL had been in operation as the primary delivery mechanism for Station

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 301.

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-12-00002409).

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-12-00002409) (*LOI Response*).

KHOC(FM) programming since April 7, 2000, and could not produce a valid FCC authorization for the STL.⁵ On May 24, 2012, Mount Rushmore submitted an application to the Commission requesting authority to operate an STL on frequency 944.5 MHz for Station KHOC(FM) in Casper, WY.⁶

III. DISCUSSION

4. Section 503(b) of the 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 of an Unlicensed Studio-Transmitter Link

5. The evidence in this case is sufficient to establish that Mount Rushmore violated Section 301 of the Act. Section 301 of the Act requires that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”¹³ At the time of the August 17, 2011, inspection, Mount Rushmore was operating an unlicensed STL on the frequency of 944.5 MHz. Mount Rushmore acknowledges the continuous operation of this STL since April 7, 2000, but is unable to provide any evidence of a Commission authorization for this operation. Based on the

⁵ *LOI Response*, Jan Gray Declaration.

⁶ See File No. 0005232119, submitted May 24, 2012 (Station KHOC(FM) STL Application). As of the date of this NAL, the Station KHOC(FM) STL 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 U.S.C. § 301.

evidence before us, we find that Mount Rushmore apparently willfully and repeatedly violated Section 301 of the Act by operating the Station KHOC(FM) STL without an FCC license for a period exceeding eleven years.

B. Proposed Forfeiture Amount and Reporting Requirement

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules,¹⁴ the base forfeiture amount for operation without an instrument of authorization is \$10,000.¹⁵ 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.¹⁶ 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 KHOC(FM) STL without an instrument of authorization.¹⁷ Accordingly, we propose a forfeiture amount of \$20,000 rather than the base forfeiture amount to Mount Rushmore for its prolonged unauthorized operation of the Station KHOC(FM) STL. 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 twenty thousand dollars (\$20,000).

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 KHOC(FM) and its associated STL in compliance with Section 301 of the Act,¹⁸ 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**

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 The Enforcement Bureau has determined that unauthorized operation in any of the licensed services is a serious violation and will merit the base forfeiture of \$10,000 prior to the application of the adjustment criteria listed in Section 503(b)(2)(E) of the Act. See *BASF Corporation*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17302-03, paras. 9-11 (Enf. Bur. 2010) (applying the \$10,000 base forfeiture for unauthorized operation of a station in the Private Land Mobile Radio Service, then upwardly adjusting the total forfeiture to \$25,000 for that violation and for failure to file a timely renewal application for the station).

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ 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).

¹⁸ 47 U.S.C. § 301.

FORFEITURE in the amount of twenty thousand dollars (\$20,000) for violation of Section 301 of the Act.¹⁹

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.²⁰ 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. 20554.²¹ 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.

¹⁹ 47 U.S.C. §§ 301 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²¹ See 47 C.F.R. § 1.1914.

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 to Sections 1.16 and 1.80(f)(3) of the Rules.²² 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

²² 47 C.F.R. §§ 1.16, 1.80(f)(3).