

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Mt. Rushmore Broadcasting, Inc.) File No.: EB-MC-15-00000013^1
Licensee of:) NAL/Acct. Nos.: 201232800002
Station KZMX(AM),) 201232800004
Hot Springs, South Dakota) 201232800005
) 201232800006
Station KZMX-FM,) 201232800007
Hot Springs, South Dakota) 201332800002
) 201332800003
Station KMLD(FM) and Station WLP722,) 201332800004
Casper, Wyoming) 201332800005
) 201432800002
Station KQLT(FM),)
Casper, Wyoming) FRN: 0008230559
)
Station KHOC(FM),) Facility ID Nos.: 46713
Casper, Wyoming) 46712
) 11927
Station KASS(FM),) 47878
Casper, Wyoming) 15925
) 43477
Gray, Jan DBA = KZMX)
Registrant of Antenna Structure Registration)
Number 1063709)
Hot Springs, South Dakota)

ORDER

Adopted: May 20, 2016

Released: May 20, 2016

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Mt. Rushmore Broadcasting, Inc. (Mt. Rushmore) violated the Commission's rules by failing to: (a) maintain a full-time management and staff presence at the main studio of two of its stations during regular business hours; (b) make those stations available for inspection by an FCC agent; (c) operate one of those stations in accordance with the terms of the station's authorization; (d) operate a studio-transmitter link station at a location authorized on

^1 The proceedings initiated under File Nos. EB-11-DV-0066, EB-FIELDWR-12-00002388, EB-FIELDWR-12-00002417, EB-FIELDWR-12-00002409, EB-FIELDWR-12-00002419, EB-FIELDWR-12-00003575, EB-FIELDWR-12-00003587, EB-FIELDWR-12-00003594, EB-FIELDWR-12-00003596, and EB-FIELDWR-13-00006467 were subsequently assigned File No. EB-MC-15-00000013. Any future correspondence with the FCC concerning this matter should reflect the new case number.

its license; (e) operate three other studio-transmitter link stations with required Commission authorizations; (f) maintain complete public inspection files at four of its stations; and (g) exhibit required red obstruction lighting on its antenna structure and immediately notify the Federal Aviation Administration (FAA) of a known obstruction light outage. The Commission's rules concerning the accessibility of a station's main studio and public inspection file ensure that a broadcast station is available to Commission personnel for inspection and serves the needs of its local community. For their part, the Commission's station authorization rules ensure licensees operate their stations within authorized parameters to avoid interference with other licensed operations, while the Commission's antenna structure painting, lighting, and registration requirements operate in concert with FAA regulations to ensure that antenna structures do not present hazards to air navigation.

2. To settle this matter, Mt. Rushmore submitted a sworn statement with financial information demonstrating an inability to pay the proposed forfeitures in the enforcement actions listed below. Mt. Rushmore admits that its operations violated the Commission's rules, will implement a comprehensive compliance plan, will enroll each of the affected stations in the relevant state Alternative Broadcast Inspection Program plan, and will pay a \$25,000 civil penalty for which it has a demonstrated ability to pay. The remainder of the proposed civil penalty will be suspended. However, Mt. Rushmore will pay the remainder of the original proposed civil penalties if the Commission finds during the next three years that the company failed to comply with the Commission's public inspection file, main studio, inspection, licensing, or tower painting and lighting rules or that Mt. Rushmore misled the Commission regarding its current financial status.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and resolving the Notices of Apparent Liability for Forfeiture² against Mt. Rushmore and its president and owner, Jan C. Gray, regarding their compliance with their stations' and antenna structures' obligations under the Communications Act of 1934, as amended,³ and the Commission's rules (Rules).⁴

4. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Mt. Rushmore or Jan C. Gray's qualifications to hold or obtain any Commission license or authorization.⁵

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act⁶ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁷ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

² *Mount Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 5296 (Enf. Bur. 2012); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8263 (Enf. Bur. 2012); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8268 (Enf. Bur. 2012); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8273 (Enf. Bur. 2012); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8278 (Enf. Bur. 2012); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1851 (Enf. Bur. 2013); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1856 (Enf. Bur. 2013); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1861 (Enf. Bur. 2013); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1866 (Enf. Bur. 2013); and *Gray, Jan DBA KZMX*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 333 (Enf. Bur. 2014).

³ 47 U.S.C. §§ 301, 303(q).

⁴ 47 C.F.R. §§ 1.903(a), 17.48(a), 17.51(a), 73.1125, 73.1225, 73.1350(a), 73.3526.

⁵ 47 C.F.R. § 1.93(b).

⁶ 47 U.S.C. § 154(i), 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Mt. Rushmore Broadcasting, Inc., at 218 N. Wolcott Street, Casper, Wyoming 82601-1923, and to Mark Lipp, Esquire, Counsel for Mt. Rushmore Broadcasting, Inc., Wiley Rein LLP, 1776 K Street NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

Before the
Federal Communications Commission
Washington, DC 20554

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Mt. Rushmore Broadcasting, Inc.) File No.: EB-MC-15-00000013^1
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Casper, Wyoming) 15925
) 43477
Gray, Jan DBA = KZMX)
Registrant of Antenna Structure Registration)
Number 1063709
Hot Springs, South Dakota

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Mt. Rushmore Broadcasting, Inc. (Mt. Rushmore), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigations into whether Mt. Rushmore violated Sections 301 and 303(q) of the Communications Act of 1934, as amended,^2 and Sections 1.903(a), 17.48(a), 17.51(a), 73.1125, 73.1225, 73.1350(a), and 73.3526 of the Commission's rules^3 in connection with Mt. Rushmore's failure to: (a) maintain a full-time management and staff presence at the main studio of two of its stations during regular business hours; (b) make those stations available for inspection by an FCC agent; (c) operate one of those stations in accordance with the terms of the station's authorization; (d) operate a studio-transmitter link station at a location authorized on its license; (e) operate three other studio-transmitter link stations with required Commission authorizations;

^1 The proceedings initiated under File Nos. EB-11-DV-0066, EB-FIELDWR-12-00002388, EB-FIELDWR-12-00002417, EB-FIELDWR-12-00002409, EB-FIELDWR-12-00002419, EB-FIELDWR-12-00003575, EB-FIELDWR-12-00003587, EB-FIELDWR-12-00003594, EB-FIELDWR-12-00003596, and EB-FIELDWR-13-00006467 were subsequently assigned File No. EB-FIELDWR-14-000XXXXX. Any future correspondence with the FCC concerning this matter should reflect the new case number.

^2 47 U.S.C. §§ 301, 303(q).

^3 47 C.F.R. §§ 1.903(a), 17.48(a), 17.51(a), 73.1125, 73.1225, 73.1350(a), 73.3526.

(f) maintain complete public inspection files at four of its stations; and (g) exhibit required red obstruction lighting on its antenna structure and immediately notify the Federal Aviation Administration of a known obstruction light outage.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.⁴
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Antenna Structure” means Antenna Structure Number 1063709 in Hot Springs, South Dakota.
 - (d) “Antenna Structure Lighting Rules” means Section 303(q) of the Act, Sections 17.48(a) and 17.51(a) of the Rules, and other Communications Laws related to the lighting of antenna structures.⁵
 - (e) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (f) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (g) “Communications Laws” means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Mt. Rushmore is subject by virtue of its business activities, including but not limited to the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules.
 - (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 14.
 - (i) “Covered Employees” means all employees and agents of Mt. Rushmore who perform, or supervise, oversee, or manage the performance of, duties that relate to Mt. Rushmore’s responsibilities under the Communications Laws, including the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules.
 - (j) “Effective Date” means the date by which both the Bureau and Mt. Rushmore have signed the Consent Decree.
 - (k) “FAA” means the Federal Aviation Administration.
 - (l) “FCC Inspection Rules” means Section 73.1225 of the Rules and other Communications Laws that require the licensee of a broadcast station to make the station available for inspection by representative of the FCC during the station’s business hours, or at any time the station is in operation.⁶
 - (m) “Investigations” means the investigations commenced by the Bureau’s Denver Office’s inspections of Station KZMX(AM) and Station KZMX-FM in Hot Springs, South Dakota, on May 31, 2011; Station KASS(FM), Station KHOC(FM), Station

⁴ 47 U.S.C. § 151 *et seq.*

⁵ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.48(a), 17.51(a).

⁶ 47 C.F.R. § 73.1225.

KQLT(FM), Station KMLD(FM), and Station WLP722 in Casper, Wyoming, on August 17, 2011; and the Antenna Structure on January 22, 2013.

- (n) “Licensing Rules” means Section 301 of the Act, Sections 1.903(a) and 73.1350(a) of the Rules, and other Communications Laws that prohibit the use or operation of a wireless radio station without a valid Commission authorization or inconsistent with such authorization, or that require a broadcast station to operate in a manner which complies with the Rules and in accordance with the station’s authorization.⁷
- (o) “Mt. Rushmore” means Mt. Rushmore Broadcasting, Inc., and its affiliates, subsidiaries, and predecessors-in-interest, as well as Jan Charles Gray, its president and owner.
- (p) “Main Studio Rules” means Section 73.1125 of the Rules and other Communications Laws that require a broadcast station to maintain a main studio with a meaningful management and staff presence along with a local telephone number in its community of license or a toll-free number.⁸
- (q) “Notices of Apparent Liability for Forfeiture” or “NALs” means *Mount Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 5296 (Enf. Bur. 2012); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8263 (Enf. Bur. 2012); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8268 (Enf. Bur. 2012); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8273 (Enf. Bur. 2012); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8278 (Enf. Bur. 2012); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1851 (Enf. Bur. 2013); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1856 (Enf. Bur. 2013); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1861 (Enf. Bur. 2013); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1866 (Enf. Bur. 2013); and *Gray, Jan DBA KZMX*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 333 (Enf. Bur. 2014).
- (r) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Mt. Rushmore to implement the Compliance Plan.
- (s) “Parties” means Mt. Rushmore and the Bureau, each of which is a “Party.”
- (t) “Public Inspection File Rules” means Section 73.3526 of the Rules and other Communications Laws that require broadcast stations to maintain a complete public inspection file.⁹
- (u) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

⁷ 47 U.S.C. § 301; 47 C.F.R. §§ 1.903(a); 73.1350(a).

⁸ 47 C.F.R. § 73.1125.

⁹ 47 C.F.R. § 73.3526.

(v) “Stations” means Station KZMX(AM), Hot Springs, South Dakota; Station KZMX-FM, Hot Springs, South Dakota; Station KASS(FM), Casper, Wyoming; Station KHOC(FM), Casper, Wyoming; Station KQLT(FM), Casper, Wyoming; Station KMLD(FM), Casper, Wyoming, and Station WLP722, Casper, Wyoming.

(w) “STL” means studio-transmitter link.

II. BACKGROUND

3. 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.”¹⁰ 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.¹¹ Section 73.1350(a) of the Rules states that “[e]ach licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules ... and in accordance with the terms of the station authorization.”¹²

4. Section 73.1125(a) of the Rules requires broadcast stations to maintain a main studio.¹³ The Commission has interpreted Section 73.1125 to require, among other things, that a licensee maintain a “meaningful management and staff presence” at its main studio.¹⁴ Specifically, the Commission has found that a main studio “must, at a minimum, maintain full-time managerial and full-time staff personnel.”¹⁵ Section 73.1125(e) requires each AM, FM, TV, and Class A TV broadcast station to “maintain a local telephone number in its community of license or a toll-free number.”¹⁶ Section 73.1225(a) of the Rules requires that the “licensee of a broadcast station shall make the station available for inspection by representatives of the FCC during the station’s business hours, or at any time it is in operation.”¹⁷

5. Section 73.3526(a)(2) of the Rules requires broadcast stations maintain for public inspection a file containing materials listed in that section.¹⁸ Section 73.3526(c)(1) of the Rules specifies that the file shall be available for public inspection at any time during regular business hours,¹⁹ and Section 73.3526(e)(12) of the Rules specifically requires licensees to place in their public inspection file for each calendar quarter, a list of programs that provided the station’s most significant treatment of community issues during the preceding three month period.²⁰ This list is known as the issues/programs

¹⁰ 47 U.S.C. § 301.

¹¹ 47 C.F.R. § 1.903(a).

¹² 47 C.F.R. § 73.1350(a).

¹³ 47 C.F.R. § 73.1125(a).

¹⁴ *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988), *erratum issued*, 3 FCC Rcd 5717 (1988) (correcting language in n.29).

¹⁵ *See Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 & n.2 (1991), clarified, 7 FCC Rcd 6800 (1992). *See also Birach Broad. Corp.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 2635 (Enf. Bur. 2010).

¹⁶ 47 C.F.R. § 73.1125(e).

¹⁷ 47 C.F.R. § 73.1225(a).

¹⁸ 47 C.F.R. § 73.3526(a)(2).

¹⁹ 47 C.F.R. § 73.3526(c)(1).

²⁰ 47 C.F.R. § 73.3526(e)(12).

list and must be retained in the public inspection file until final action has been taken on the station's next license renewal application.²¹

6. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.²² Section 17.51(a) of the Rules at the time of the violation stated that “[a]ll red obstruction lighting shall be exhibited from sunset until sunrise unless otherwise specified.”²³ Section 17.48(a) of the Rules at the time of the violation stated that owners of antenna structures “shall report immediately by telephone or telegraph to ... the Federal Aviation Administration any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light ... not corrected within 30 minutes.”²⁴

7. Mt Rushmore is the licensee of Station KZMX(AM) and Station KZMX-FM in Hot Springs, South Dakota, as well as Station KASS(FM), Station KHOC(FM), Station KQLT(FM), Station KMLD(FM) and Station WLP722 in Casper, Wyoming. The president and owner of Mt. Rushmore, Jan Charles Gray, also owns the Antenna Structure in Hot Springs, South Dakota. Agents from the Bureau's Denver Office conducted inspections of the Stations and the Antenna Structure. The Denver Office subsequently issued ten NALs to Mt. Rushmore for apparent violations discovered during these inspections of the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules.²⁵ In the NALs, the Denver Office found that Mt. Rushmore failed to: (a) maintain a full-time management and staff presence at the Station KZMX(AM) and Station KZMX-FM main studio during regular business hours and maintain a local telephone number in the Stations' community of license or a toll-free number;²⁶ (b) make Station KZMX(AM) and Station KZMX-FM available for inspection by an FCC agent;²⁷ (c) operate Station KZMX-FM in accordance with the terms of the station's authorization;²⁸ (d) operate STL Station WLP722 at a location authorized on its license;²⁹ (e) operate stations at Station KQLT(FM),³⁰ Station KHOC(FM),³¹ and Station

²¹ *Id.*

²² 47 U.S.C. § 303(q).

²³ 47 C.F.R. § 17.51(a) (2013).

²⁴ 47 C.F.R. § 17.48(a) (2013).

²⁵ *Mount Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 5296 (Enf. Bur. 2012) (*Stations KZMX(AM) and KZMX-FM NAL*); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8263 (Enf. Bur. 2012) (*Stations KMLD and WLP722 NAL*); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8268 (Enf. Bur. 2012) (*Station KQLT(FM) STL NAL*); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8273 (Enf. Bur. 2012) (*Station KHOC(FM) STL NAL*); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8278 (Enf. Bur. 2012) (*Station KASS(FM) STL NAL*); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1851 (Enf. Bur. 2013) (*Station KASS(FM) Public File NAL*); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1856 (Enf. Bur. 2013) (*Station KHOC(FM) Public File NAL*); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1861 (Enf. Bur. 2013) (*Station KMLD(FM) Public File NAL*); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1866 (Enf. Bur. 2013) (*Station KQLT(FM) Public File NAL*); *Gray, Jan DBA KZMX*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 333 (Enf. Bur. 2014) (*Station KZMX Antenna Registration NAL*).

²⁶ *Stations KZMX(AM) and KZMX-FM NAL*, 27 FCC Rcd at 5299, para. 8.

²⁷ *Id.* at 5299, para. 9.

²⁸ *Id.* at 5299, para. 10.

²⁹ *Stations KMLD and WLP722 NAL*, 27 FCC Rcd at 8264–65, para. 5.

³⁰ *Station KQLT(FM) STL NAL*, 27 FCC Rcd at 8269–70, para 5.

³¹ *Station KHOC(FM) STL NAL*, 27 FCC Rcd at 8274–75, para 5.

KASS(FM) with required Commission authorizations;³² (f) maintain complete public inspection files at Station KASS(FM),³³ Station KHOC(FM),³⁴ Station KMLD(FM),³⁵ and Station KQLT(FM),³⁶ and (g) exhibit required red obstruction lighting after sunset on the Antenna Structure used in the operation of Station KZMX(AM) and Station KZMX-FM) and immediately notify the FAA of a known light outage.³⁷

8. Following the release of the *NALs*, the Bureau and Mt. Rushmore conducted settlement negotiations. During those negotiations, Mt. Rushmore claimed an inability to pay the proposed forfeitures and supplied the Bureau with a written statement submitted under oath, evidencing its financial status along with the financial status of its owner. Among the materials submitted to the Bureau, were several years of tax returns. After further discussions, the Parties agree to the following terms and conditions of settlement and hereby enter into this Consent Decree as provided below.

III. TERMS OF AGREEMENT

9. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

10. **Jurisdiction.** Mt. Rushmore agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

11. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date, as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

12. **Termination of Investigations.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigations. In consideration for the termination of the Investigations, Mt. Rushmore agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, it will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Mt. Rushmore concerning the matters that were the subject of the Investigations. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of Mt. Rushmore's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.³⁸

13. **Admission of Liability.** Mt. Rushmore admits for the purpose of this Consent Decree and Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 11 herein, that the operation of its Stations and the Antenna Structure violated the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules, as detailed in paragraph 7 herein.

³² *Station KASS(FM) STL NAL*, 27 FCC Rcd at 8279–80, para 5.

³³ *Station KASS(FM) Public File NAL*, 28 FCC Rcd at 1852, para. 4.

³⁴ *Station KHOC(FM) Public File NAL*, 28 FCC Rcd at 1857, para. 4.

³⁵ *Station KMLD(FM) Public File NAL*, 28 FCC Rcd at 1862, para. 4.

³⁶ *Station KQLT(FM) Public File NAL*, 28 FCC Rcd at 1867, para. 4.

³⁷ *Station KZMX Antenna Registration NAL*, 29 FCC Rcd at 335, para. 7.

³⁸ See 47 C.F.R. 1.93(b).

14. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Mt. Rushmore shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Mt. Rushmore complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules prior to assuming his/her duties.

15. **Compliance Plan.** For purposes of settling the matters set forth herein, Mt. Rushmore agrees that it shall within one hundred twenty (120) calendar days after the Effective Date develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules, Mt. Rushmore shall implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within one hundred twenty (120) calendar days after the Effective Date, Mt. Rushmore shall establish Operating Procedures that all Covered Employees must follow to help ensure Mt. Rushmore's compliance with the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules. The Compliance Officer shall ensure that the required obstruction lighting on Mt. Rushmore's antenna structures is properly maintained and that outages of any top burning or flashing obstruction light on any such antenna structure will be immediately reported to the FAA, and ensure that such antenna structures otherwise comply with the Antenna Structure Lighting Rules. The Compliance Officer shall also ensure that each of the Stations is made available for inspection by a representative of the FCC during the station's business hours, or at any time the station is in operation, and complies with the FCC Inspection Rules. The Compliance Officer shall also designate a Covered Employee to be responsible for developing and maintaining a database of all broadcast and affiliated licenses held by Mt. Rushmore and ensure that all transmitters used by the Stations are properly licensed, operated consistent with the terms of their authorizations, and comply with the Licensing Rules. The Compliance Officer shall also ensure each of the Stations maintains a main studio with a meaningful management and staff presence at the main studio, as well as a local telephone number in its community of license or a toll-free number, and complies with the Main Studio Rules. The Compliance Office shall also ensure that each of the Stations maintains and makes available a complete public inspection file, including all required issues/programs lists, which complies with the Public Inspection File Rules.
- (b) **Compliance Manual.** Within one hundred twenty (120) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Mt. Rushmore's compliance with the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules. Mt. Rushmore shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Mt. Rushmore shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Mt. Rushmore shall establish and implement a Compliance Training Program on compliance with the Antenna Structure Lighting

Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, Public Inspection File Rules, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Mt. Rushmore's obligation to report any noncompliance with the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules under paragraph 15 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within one hundred twenty (120) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Mt. Rushmore shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

- (d) **Alternative Broadcast Inspection Program (ABIP) Participation.** Within thirty (30) calendar days of the Effective Date, Mt. Rushmore shall enroll each of the Stations in the ABIP sponsored by the relevant state broadcasting association. Within ninety (90) calendar days of the Effective Date, the results of the ABIP inspection of each station, including the full report of the findings and conclusions of the ABIP inspector, along with any notifications or findings of non-conformance and/or Certificates of Compliance, shall be submitted to the District Director, Denver Office, Western Region, Enforcement Bureau, Federal Communications Commission, P.O. Box 25446, DFC Building 1A, One Denver Federal Center, Lakewood, Colorado 80225, with a copy submitted electronically to Nikki P. Shears at Nikki.Shears@fcc.gov and WR-Response@fcc.gov.

16. **Reporting Noncompliance.** Mt. Rushmore shall report any noncompliance with the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after the discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Mt. Rushmore has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Mt. Rushmore has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the District Director, Denver Office, Western Region, Enforcement Bureau, Federal Communications Commission, P.O. Box 25446, DFC Building 1A, One Denver Federal Center, Lakewood, Colorado 80225, with a copy submitted electronically to Nikki P. Shears at Nikki.Shears@fcc.gov and WR-Response@fcc.gov.

17. **Compliance Reports.** Mt. Rushmore shall file Compliance Reports with the Commission one hundred twenty (120) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Mt. Rushmore's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, and Public Inspection File Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Mt. Rushmore, stating that the Compliance Officer has personal knowledge that Mt. Rushmore: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance

with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 15 hereof.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.³⁹
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Mt. Rushmore, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Mt. Rushmore has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Mt. Rushmore has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the District Director, Denver Office, Western Region, Enforcement Bureau, Federal Communications Commission, P.O. Box 25446, DFC Building 1A, One Denver Federal Center, Lakewood, Colorado 80225, with a copy submitted electronically to Nikki P. Shears at Nikki.Shears@fcc.gov and WR-Response@fcc.gov.

18. **Termination Date.** Unless stated otherwise, the requirements of paragraphs 13 through 16 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

19. **Civil Penalty.** In light of Mt. Rushmore's demonstrated inability to pay and subject to the provisions of paragraph 20 below, Mt. Rushmore will pay a civil penalty to the United States Treasury in the amount of twenty-five thousand dollars (\$25,000) within thirty (30) calendar days of the Effective Date (Civil Penalty). Mt. Rushmore acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in Section 3701(b)(1) of the Debt Collection Improvement Act of 1996 (DCIA).⁴⁰

20. **Suspended Penalty.** Mt. Rushmore further agrees that, upon an Event of Default (as described below in paragraph 22), it will pay a further civil penalty to the United States Treasury in the amount of one hundred thirty-four thousand, five hundred dollars (\$134,500) (Additional Civil Penalty). Mt. Rushmore acknowledges and agrees that upon an Event of Default, the Additional Civil Penalty shall also become a "Claim" or "Debt" as defined in Section 3701(b)(1) of the DCIA,⁴¹ and all procedures for collection of the Additional Civil Penalty may, at the Commission's discretion, be initiated against Mt. Rushmore. In the event, Mt. Rushmore shall assign or transfer any of the Stations to a party not currently affiliated with Mt. Rushmore, the Commission shall not enforce the Civil Penalty against such assignee or transferee.

³⁹ 47 C.F.R. § 1.16.

⁴⁰ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996) (DCIA).

⁴¹ *Id.*

21. **Payment.** Mt. Rushmore shall send electronic notification of payment to WR-Response@fcc.gov on the date payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁴² 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). Below are additional instructions that should be followed based on the form of payment selected:

- 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.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. **Event of Default.** Mt. Rushmore agrees that an Event of Default shall occur upon (1) the failure to pay the Civil Penalty to the United States Treasury on or before the day specified in paragraph 18; (2) the release of an order within three years of the Effective Date by the Commission, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order, finding that Mt. Rushmore or any other entity owned, operated, or controlled by, or under common control with Mt. Rushmore violated the Antenna Structure Lighting Rules, FCC Inspection Rules, Licensing Rules, Main Studio Rules, or Public Inspection File Rules; or (3) the release of an order by the Commission finding that Mt. Rushmore materially misstated its financial condition in the documents it produced to support its claim of inability to pay.

23. **Interest, Charges for Collection, and Acceleration of Maturity Date.** Upon an Event of Default, all procedures for collection permitted by the DCIA and other provisions of law⁴³ may, at the Commission’s discretion, be initiated and the following shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Mt. Rushmore: (a) any unpaid Civil Penalties referenced in paragraph 19, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (b) the Additional Civil Penalty referenced in paragraph 20, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (c) any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717; and (d) any administrative charge(s), including the costs of collection, litigation, and attorneys’ fees.

⁴² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁴³ See 31 C.F.R. Part 900, *et seq.*

24. **Waivers.** As of the Effective Date, Mt. Rushmore waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Mt. Rushmore shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Mt. Rushmore nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Mt. Rushmore shall waive any statutory right to a trial *de novo*. Mt. Rushmore hereby agrees to waive any claims it may have under the Equal Access to Justice Act⁴⁴ relating to the matters addressed in this Consent Decree.

25. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

26. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

27. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission, that provision will be superseded by such Rule or Order.

28. **Successors and Assigns.** The provisions of this Consent Decree shall be binding only upon any successors entities or assigns upon which Mt. Rushmore or its principal, Jan Charles Gray, has an attributable interest.

29. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigations.

30. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

31. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

32. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

⁴⁴ See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

33. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Travis LeBlanc
Chief
Enforcement Bureau

Date

Jan Charles Gray
President
Mt. Rushmore Broadcasting, Inc.

Date