

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

In the Matter of)	
)	
American Radio Brokers, Inc.)	File No. EB-00-AN-033
)	
Licensee of Station KAXX(AM))	NAL/Acct. No. X3278001
Eagle River, Alaska)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 2001

Released: April 3, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny a petition for reconsideration filed by American Radio Brokers, Inc. (“American”), licensee of Station KAXX(AM), Eagle River, Alaska, of a *Forfeiture Order*¹ which issued a \$4,000 forfeiture against American for willful violation of Section 1.89(b) of the Commission’s Rules (“Rules”).² The noted violation involved the failure to respond to written Commission inquiries.

II. BACKGROUND

2. On January 21, 1999, agents from the FCC’s Anchorage, Alaska Resident Agent Office (“Anchorage Office”) inspected Station KAXX(AM). During the inspection, the agents observed numerous violations of the Commission’s rules involving lack of station authorization or renewals, equipment performance measurements and logs, administrative and station files, improper transmission system control and tower lighting monitoring.

3. On June 11, 1999, the Anchorage Office sent a Notice of Violation (“NOV”) to American detailing the violations observed during the January 21, 1999 inspection and requiring a written response from American within 20 days. American did not respond to this NOV. On or around July 1, 1999, Chester Coleman, president and owner of American, called the Anchorage Office and requested an extension of time to respond to the NOV. The Anchorage Office orally granted the request. However, American did not respond to the NOV.

4. On November 3, 1999, the Anchorage Office sent a second NOV to American, citing American for failing to respond to the first NOV and directing American to provide a response to the first NOV within 15 days. American did not respond to the second NOV. On or around March 1, 2000, Mr. Coleman called the Anchorage Office on a unrelated matter. At this time, an agent from the Anchorage

¹ *American Radio Brokers, Inc.*, 15 FCC Rcd 19712 (Enf. Bur., 2000).

² 47 C.F.R. § 1.89(b).

Office reminded Mr. Coleman that he had not yet responded to either of the NOV's. Mr. Coleman asked for another extension of time to respond. The Anchorage Office granted American a 30-day extension of time to respond to the NOV's and warned Mr. Coleman that failure to respond within 30 days could result in administrative sanctions. American did not respond to the NOV's within the 30-day period.

5. On July 28, 2000,³ the Anchorage Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$4,000 to American for failure to respond to written Commission inquiries in willful violation of Section 1.89(b) of the Rules.⁴ American did not respond to the NAL.

6. On October 13, 2000, the Enforcement Bureau issued a *Forfeiture Order* assessing a \$4,000 forfeiture against American for failure to respond to written Commission inquiries in willful violation of Section 1.89(b) of the Rules. American filed a petition for reconsideration of the *Forfeiture Order* on November 13, 2000, seeking rescission of the forfeiture amount. In the petition, American claims that it cannot be charged with a violation of Section 1.89(b) because it recently responded to the NOV and provided an explanation as to why it was unable to respond earlier. American also argues that the Commission "lacks the moral authority" to impose forfeitures on its regulatees who violate the Rules because the Commission itself often fails to comply with the requirements of the Rules and the Communications Act of 1934, as amended ("Act").

III. DISCUSSION

7. We reject American's claim that it cannot be charged with a violation of Section 1.89(b) because it recently responded to the NOV and provided an explanation as to why it was unable to respond earlier. Section 1.89(b) of the Rules explicitly requires the recipient of an NOV to respond in writing to that Notice within ten days of receipt or any other time period specified within the NOV. If an answer or acknowledgement of the NOV cannot be made within the specified period due to "illness or other unavoidable circumstance," a response still must be submitted "at the earliest practicable date with a satisfactory explanation of the delay."⁵ The Anchorage Office issued the first NOV to American on June 11, 1999. Despite being granted two extensions of time to respond and being explicitly warned that failure to respond could result in administrative sanctions, American did not submit a response to this NOV until November 9, 2000, one month after the *Forfeiture Order* was issued. The only explanation that American offers for this approximately 17 month delay in responding is that "[t]he press of other exigent matters has prevented my response until now." We conclude that American has not provided evidence of "unavoidable circumstances" that would explain its 17 month delay in responding to the NOV.

³ The Anchorage Office originally released the NAL and mailed it to American via certified mail return receipt requested on June 13, 2000. The U.S. Postal Service certified mail card came back to the Anchorage Office unsigned on July 20, 2000, and the unclaimed envelope containing the NAL came back to the Anchorage Office on July 26, 2000. The Anchorage Office therefore re-released the NAL and mailed it to American via certified mail return receipt requested and regular first class mail on July 28, 2000. The U.S. Postal Service certified mail card and envelope containing the re-released NAL came back to the Anchorage Office marked "REFUSED" on August 9, 2000. The first class mail copy of the re-released NAL was not returned to the Anchorage Office.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. X3278001 (Enf. Bur., Anchorage Office, released July 28, 2000).

⁵ 47 C.F.R. § 1.89(b).

8. We also reject American's argument that the Commission "lacks the moral authority" to impose forfeitures on its regulatees who violate the Rules. Section 503(b) of the Act⁶ and Section 1.80 of the Rules⁷ clearly authorize the Commission to assess forfeiture penalties on regulatees who violate the Act or the Rules. American's assertions concerning the Commission's "moral authority" provide no basis for reconsideration of the *Forfeiture Order*. Accordingly, we deny its petition for reconsideration.

IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 405 of the Act,⁸ and Section 1.106 of the Rules,⁹ American Radio Brokers, Inc.'s petition for reconsideration of the *Forfeiture Order* **IS DENIED**.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹⁰ within 30 days of the release of this *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.¹¹ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3278001. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

11. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Chester P. Coleman, c/o American Radio Brokers, Inc., 1255 Post Street, Suite 1011, San Francisco, California 94109, and to David Tillotson, Esq., 4606 Charleston Terrace, NW, Washington, D.C. 20007-1911.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 405

⁹ 47 C.F.R. § 1.106.

¹⁰ 47 C.F.R. § 1.80.

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.