

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

In the Matter of)	
)	
Glenn A. Baxter)	File No. EB-04-BS-111
Belgrade Lakes, ME)	NAL/Acct. No. 200532260001
)	FRN 0013164975
Licensee of Amateur Radio Station K1MAN)	
)	

FORFEITURE ORDER

Adopted: March 27, 2006

Released: March 29, 2006

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twenty-one thousand dollars (\$21,000) to Glenn A. Baxter (“Baxter”), licensee of Amateur Radio Station K1MAN, for willful and repeated violation of Sections 97.101(d) and 97.113(a)(3) of the Commission’s Rules (“Rules”), for willful violation of Section 97.105(a) and 97.113(b) of the Rules, and for willful and repeated failure to file required information pursuant to an Enforcement Bureau (“Bureau”) directive.¹ The noted violations of the Rules involve interference with the ongoing communications of other Amateur radio stations, failure to exercise station control, transmission of communications in which Baxter had a pecuniary interest, and transmission of communications that constituted impermissible broadcasting.

II. BACKGROUND

2. In response to numerous complaints of deliberate interference caused by transmissions from Baxter’s Amateur Radio Station K1MAN to ongoing radio communications of other amateur stations, the Bureau issued Warning Notices to Baxter on September 15, 2004 and October 29, 2004.² Agents in the Commission’s Boston Field Office (“Boston Office”) subsequently conducted an

¹ 47 C.F.R. §§ 97.101(d), 97.113(a)(3), 97.105(a), and 97.113(b).

² See Letter from W. Riley Hollingsworth, Special Counsel, Spectrum Enforcement Division, Enforcement Bureau, September 15, 2004; Letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau, October 29, 2004. In the letter dated September 15, 2004, Mr. Hollingsworth reminded Baxter that the Bureau previously warned him in a letter dated April 14, 2004 that enforcement action would be taken if he failed to correct the deliberate interference being caused by his station. The April 14, 2004 letter had cautioned Baxter that he could be subject to further enforcement action if he continued to transmit communications in which he had a pecuniary interest. The April 14, 2004 letter was a follow-up to letters dated January 29, 2002 and March 4, 2003, issued as a result of several dozen complaints alleging rule violations by K1MAN.

investigation, including monitoring and inspecting Baxter's station and, as a result of the investigation, the Boston Office issued a *Notice of Apparent Liability* to Baxter on June 7, 2005, in the amount of twenty-one thousand dollars (\$21,000).³

3. In the *NAL*, the Boston Office found that Baxter apparently willfully and repeatedly violated Section 97.101(d) of the Rules, which states that "[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal."⁴ FCC agents observed Baxter's Amateur Radio Station K1MAN commence transmissions on top of existing communications on 3.890 MHz on November 27, 2004, December 8, 2004, and March 31, 2005.

4. The Boston Office further observed that Baxter apparently willfully and repeatedly violated Section 97.113(a)(3) of the Rules by transmitting, on November 25, 2004, and March 30, 2005, information regarding his website, which offers various products for sale, including a monthly newsletter published by Baxter and offered for sale for forty-five dollars per year. In addition, on December 1, 2004, Baxter transmitted a seventy-minute interview with a person who was considering whether to retain Baxter Associates, an employment-search firm owned by Baxter. During the transmission, Baxter discussed fees for his franchises, investments, and franchising opportunities. Section 97.113(a)(3) of the Rules prohibits an Amateur station from transmitting any communications in which the station licensee or control operator has a pecuniary interest.

5. The Boston Office also concluded that Baxter apparently willfully and repeatedly violated Section 308(b) of the Communications Act of 1934, as amended, which provides that the Commission "during the term of any. . . licenses, may require from. . . a licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. . . ." ⁵ Baxter was directed in Warning Notices dated September 15 and October 29, 2004, to provide information regarding how station K1MAN was controlled and the identity of the control operator. The Boston Office found that Mr. Baxter's statements that "[n]o corrective actions are necessary" and "[n]o changes are needed with regard to station control" failed to comply with the Bureau's demand for station information.

6. Baxter also was found to have apparently willfully violated Section 97.113(b) of the Rules, which prohibits, with limited exceptions not applicable in this case, an Amateur station from engaging in any form of broadcasting or transmission of one-way communications.⁶ The Boston Office concluded that the pre-recorded seventy-minute interview with a person interested in retaining Baxter Associates, during which there was no station identification, constituted a "broadcast" and an impermissible one-way transmission.

7. The Boston Office further concluded that Baxter apparently willfully failed to exercise

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532260001 (Enf. Bur., Boston Office, June 7, 2005) ("NAL").

⁴ Section 97.101(b) provides that each station licensee must cooperate in selecting transmitting channels and in making the most effective use of the amateur service frequencies. The rule further provides that no frequency will be assigned for the exclusive use of any station. *See* 47 C.F.R. § 97.101(b). Because amateur radio station licensees share frequencies, the prohibition against willful or malicious interference is essential to the viability of amateur radio.

⁵ 47 U.S.C. § 308(b).

⁶ Section 97.3(a)(10) of the Rules defines broadcasting as "transmissions intended for reception by the general public." 47 C.F.R. § 97.3(a)(10).

control over his station, as required under Section 97.105(a) of the Rules.⁷ On December 19, 2004, station K1MAN repeated the same pre-recorded phrase, and segments thereof, for 45 minutes on 3.975 MHz after which the transmissions ended abruptly in mid-sentence without the station identification required by the Rules.⁸

8. Baxter submitted a reply on June 16, 2005 denying any liability for the forfeiture amount. Citing the Fifth and Sixth amendments to the United States Constitution, Baxter requests “all documentation regarding the alleged apparent liability and. . . a trial like hearing before the full Commission.” Baxter notes that, although he previously has received three Notices of Apparent Liability, he has not been able to appeal those to the full Commission and therefore repeatedly has been denied access to “the Washington D.C. Court of Appeals in the pursuit of due process of law as guaranteed by the United States Constitution.” Baxter does not submit any substantive responses to the apparent violations set forth in the *NAL*.

9. On July 18, 2005, REC Networks (“REC”), through its principal Rich Eyre, filed a Petition for Leave to File Amicus Pleading and an associated Motion for Partial Reconsideration or Declaratory Ruling. REC is concerned that the findings in the *NAL* regarding Baxter’s apparent liability for violating Section 97.113(a)(3) of the Rules by transmitting references to his website could subject many amateur radio licensees to similar enforcement action merely for uttering a website address on their stations.

III. DISCUSSION

10. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁹ Section 1.80 of the Rules,¹⁰ and the *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹¹ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹²

11. We decline to grant Baxter’s request for a hearing. Section 503(b)(3)(A) of the Act states that “[a]t the discretion of the Commission, a forfeiture penalty may be determined against a person .. after notice and an opportunity for a hearing before the Commission or an administrative law judge....”¹³

⁷ Section 97.105(a) of the Rules provides that the control operator must ensure the proper operation of the station. 47 C.F.R. § 97.105. Section 97.7 of the Rules requires each Amateur station to have a control operator when transmitting. 47 C.F.R. § 97.7. Pursuant to Sections 97.103(a) and (b) of the Rules, the station licensee is responsible for the proper operation of the station in accordance with the Rules, and the FCC will presume that the station licensee is also the control operator, unless documentation to the contrary is in the station records. Baxter is the licensee of Station K1MAN and there is no evidence in the Commission’s records that Baxter has designated another control operator.

⁸ See 47 C.F.R. §97.119.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ 47 U.S.C. § 503(b)(3)(A). We note that the Fifth and Sixth Amendments to the United States Constitution address the rights of defendants in criminal cases and therefore Baxter’s reliance on those amendments in support of his request for a hearing before the Commission is misplaced.

Section 1.80(g) of the Rules states that procedures for hearings "will ordinarily be followed only when a hearing is being held for some reason other than the assessment of a forfeiture...."¹⁴ Accordingly, the "reference to a notice of opportunity for hearing mentioned in Section 1.80(g) of the Commission's Rules is a discretionary provision available to the Commission that is not normally utilized when only monetary forfeiture matters are involved."¹⁵ The Rule also states, however, that "these [hearing] procedures may be followed whenever the Commission, in its discretion, determines that they will better serve the ends of justice."¹⁶

12. Baxter has not shown that there is any reason for us to follow anything but our ordinary procedures for monetary forfeitures or that a hearing "will better serve the ends of justice." Baxter received notice regarding the legal and factual bases for the apparent violations and proposed forfeiture and has been afforded an opportunity to respond "why no such forfeiture penalty should be imposed."¹⁷ Although Baxter categorically claims no liability for the forfeiture, he has chosen not to present any specific exculpatory arguments or evidence in response to the violations set forth in the *NAL*.¹⁸ A licensee's decision to forego the opportunity to present exculpatory arguments and evidence in response to a *NAL* does not create a right to a hearing and, accordingly, we conclude that an evidentiary hearing is not required in this case.¹⁹

13. We have examined Baxter's response to the *NAL* pursuant to the statutory factors above and in conjunction with the Policy Statement. As a result of our review, and based on the record before us, we conclude that Baxter willfully and repeatedly interfered with ongoing communications of other stations in violation of Section 97.101(d) of the Rules. We further conclude that Baxter willfully and repeatedly transmitted communications in which he had a pecuniary interest in violation of Section 97.113(a)(3) of the Rules. We find that Baxter willfully and repeatedly failed to file requested information pursuant to a Bureau directive. We further find that Baxter willfully engaged in broadcasting in violation of 97.113(b) of the Rules and willfully failed to exercise control of his station in violation of Section 97.105(a) of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$21,000 forfeiture is warranted.²⁰

14. Finally, we deny REC's Petition for Leave to File Amicus Pleading because we find no basis for consideration of the associated petition, either as a petition for reconsideration or as a petition for

¹⁴ 47 C.F.R. § 1.80(g).

¹⁵ *Arcom Communications*, Forfeiture Order, NAL/Acct. No. 200532680005 (rel. December 21, 2005), quoting *Computer Data, Inc.*, Order, 9 FCC Rcd 263 (Field Operations Bureau 1994).

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 503(b)(4)(C).

¹⁸ To the extent Baxter seeks Commission documents regarding the instant matter, he is required to submit a Freedom of Information Act request pursuant to 47 C.F.R. § 0.461. Information regarding the process for submitting such a request is available on the FCC's website at <http://www.fcc.gov/foia/>.

¹⁹ We note that these procedures do not deprive Baxter of his right to due process because any forfeiture issued in accordance with these procedures is ultimately subject to a trial de novo in federal district court pursuant to Section 504(a) of the Act should Baxter not pay prior to such time. *See* 47 U.S.C. § 504(a). We also note that the three previous *NAL*s to which Baxter refers in his response are not relevant to the instant proceeding because they were issued in 1990 and 1991 during Baxter's prior license term. Baxter's license subsequently was renewed and therefore we have no reason to believe that Baxter was harmed when he did not previously receive a hearing.

²⁰ The forfeiture amount was calculated as follows: \$7,000 for willful or malicious interference, \$3,000 for failure to file required information, \$3,000 for violation of transmitter control, \$4,000 for each of the two violations of the pecuniary interest rule. *See NAL* at para. 18.

declaratory ruling. Although REC recognizes that it does not have standing to file pleadings in this proceeding, REC requests that we accept its Petition because it believes the findings in the *NAL* regarding references to websites on amateur radio stations may impact other amateur licensees.²¹ As a petition for reconsideration, REC's pleading is premature. A Notice of Apparent Liability is not a "final Commission action," which is a predicate for filing a petition for reconsideration under Section 1.106 of the Rules.²² Therefore, as a petition for reconsideration, REC's pleading will be dismissed with prejudice. In the alternative, REC requests that we treat the pleading as a petition for declaratory ruling. Because the petition seeks an interpretation of the Commission's Amateur Radio Service rules as they relate to website references on amateur radio stations, it is more appropriately addressed by the Wireless Telecommunications Bureau, which is the Bureau responsible for implementing rules and policies with regard to the Amateur Radio Service. Accordingly, the petition for declaratory ruling will be dismissed without prejudice and may be re-filed with the Office of the Secretary in accordance with the procedures set forth in Part 1 of the Rules.²³

15. We take this opportunity to note, however, that the violation for which Baxter is being assessed a forfeiture is not the mere mention of a website. Baxter violated Section 97.113(a)(3) of the Rules because he has a direct pecuniary interest in the products offered for sale on the website about which he provided information on his amateur radio station.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,²⁴ and Sections 0.111, 0.311 and 1.80(f)4) of the Rules,²⁵ Glenn A. Baxter **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-one thousand dollars (\$21,000) for willfully and repeatedly failing to furnish information requested by the Bureau, willful and repeated violation of Sections 97.101(d) and 97.113(a)(3) of the Rules, and willful violation of Sections 97.105(a) and 97.113(b) of the Rules.

17. **IT IS FURTHER ORDERED** that REC Network's Petition for Leave to File Amicus Pleading **IS DENIED** and REC Network's Petition for Partial Reconsideration or Declaratory Ruling is in part **DISMISSED WITH PREJUDICE** and in part **DISMISSED WITHOUT PREJUDICE** as set forth herein.

18. 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 *Order*. If the forfeiture is not paid within the period

²¹ We agree with REC that it does not have standing as a "party" to this proceeding. We also note that Section 1.106 of the Rules provides that "any other person whose interests are adversely affected" may file a petition for reconsideration." Even if REC's petition for reconsideration were ripe for review, REC would not have standing under the "adversely affected" standard either. The Commission has found that "the mere precedential effect of the agency's rationale in later adjudications does not give rise to a legally cognizable injury and it does not create standing. . . ." See *Texas Cable and Telecommunications Association*, 17 FCC Rcd 6261 (2002) para. 10 (citations omitted). We also note that REC's Petition was filed after the 30-day period for filing petitions for reconsideration. See 47 C.F.R. § 1.106(f).

²² See 47 C.F.R. § 1.106; See also *Peninsula Communications, Inc.*, 17 FCC Rcd 2832 (2002) n.3 (citations omitted).

²³ See 47 C.F.R. §§ 1.1 *et seq.*

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

specified, that case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.²⁷

19. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Glenn A. Baxter at his address of record and to REC Networks at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Russell Monie, Jr.
Regional Director, Northeast Region
Enforcement Bureau

²⁶ 47 U. S. C. § 504(a).

²⁷ See 47 C.F.R. § 1.1914.