

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FCC 13M-20
09792

In the Matter of)
)
GLENN A. BAXTER) WT Docket No. 11-7
) FCC File No. 0002250244
Application to Renew License for Amateur)
Radio Service Station K1MAN)

MEMORANDUM OPINION AND ORDER

Issued: October 28, 2013

Released: October 28, 2013

Preliminary Statement

1. In its filing dated August 14, 2013, the Enforcement Bureau (“the Bureau”) requests that the Presiding Judge issue a stay in this proceeding pending action of the Wireless Telecommunications Bureau (“WTB”) that the Bureau anticipates will render this proceeding moot.¹

Facts

2. In June 2005, the Bureau issued a Notice of Apparent Liability and Forfeiture (“NAL”) to Glenn A. Baxter finding that he had willfully violated specified Commission Rules.² In March 2006, the Bureau issued a monetary forfeiture penalty of \$21,000³ to Mr. Baxter, noting that he “chose [. . .] not to present any specific exculpatory arguments or evidence in response to the violations set forth in the NAL.”⁴ Mr. Baxter did not pay the monetary forfeiture. In October 2010, the United States Attorney’s Office for the District of Maine filed a complaint in United States District Court for the District of Maine in an attempt to collect the monetary

¹ Enforcement Bureau’s Request to Stay Proceeding at 1 ¶ 1 (Aug. 14, 2013) (“Enforcement Bureau’s Request”).

² The Bureau determined that Mr. Baxter “willfully and repeatedly interfered with radio communications . . . in apparent willful and repeated violation of Section 97.101(d) of the Rules, . . . apparently willfully and repeatedly violated Section 97.113(a)(3) of the Rules . . . by transmitting communications regarding matters in which he has a pecuniary interest, . . . , apparently willfully and repeatedly failed to comply with a Bureau directive to file information regarding control of Station K1MAN as required by Section 308(b) of the Communications Act of 1934, as amended . . . apparently willfully violated Section 97.113(b) of the Rules by transmitting the pre-recorded seventy-minute interview about Baxter Associates, during which there was no station identification, . . . [and] did not exercise control of his station, thereby apparently willfully violating Section 97.105(a) of the Rules.” *Glenn A. Baxter*, Hearing Designation Order, WT Docket No. 11-7, 26 FCC Rcd. 231, 232-33 ¶ 7 (2011) (citing *Glenn A. Baxter*, Notice of Apparent Liability for Forfeiture, File No. EB-04-BS-111 (EB, Boston Office June 7, 2005).

³ See *Glenn A. Baxter*, Forfeiture Order, File No. EB-04-BS-111, 21 FCC Rcd 3071 (EB, Northeast Region 2006) (“Forfeiture Order”). In its Request, the Bureau incorrectly states that it had, through its Forfeiture Order, issued a monetary forfeiture to Mr. Baxter in the amount of \$23,000.

⁴ *Id.* at 3074 ¶ 12.

forfeiture from Mr. Baxter.⁵ In its Order on Motion for Summary Decision, the District Court granted partial summary judgment in favor of the United States and imposed a total monetary forfeiture of \$10,000 upon Mr. Baxter.⁶ The District Court entered judgment reflecting this determination on February 1, 2012.⁷ Mr. Baxter appealed the District Court's entry of judgment to the United States Court of Appeals for the First Circuit. The First Circuit affirmed the District Court's judgment on September 10, 2012.⁸ Mr. Baxter did not file any further appeals.⁹

3. On February 21, 2012, the Commission's Office of the Managing Director mailed a Notice of Withholding of Action ("Notice") to Mr. Baxter, notifying him that action upon his application for renewal would be withheld until he made full payment on, or arrangements for payment of, the owed forfeiture of \$10,000.¹⁰ The Notice explained the provisions of 47 C.F.R. § 1.1910 (the "Red Light Rule")¹¹ and further explained that Mr. Baxter's application would be dismissed if he did not pay the forfeiture within 30 days.¹² While Mr. Baxter did acknowledge receipt of the Notice on February 26, 2012,¹³ he has not paid the forfeiture and has not made arrangements to pay the forfeiture.¹⁴

4. On August 14, 2013, the Bureau filed a motion requesting that the Presiding Judge issue a stay in this proceeding. The Bureau makes its request in anticipation of action by the WTB under the Red Light Rule, which the Bureau believes would preclude the need for the planned hearing on Mr. Baxter's application. The Bureau argues that Mr. Baxter was properly notified on February 21, 2012, of the delinquency of his forfeiture indebtedness as required by the Red Light Rule and that Mr. Baxter has failed to pay or make arrangements to pay the debt within 30 days of the date of the Notice. Therefore, the Bureau argues, the Red Light Rule requires the dismissal of his application. The Bureau's request concludes that such an expected pending result from the WTB would moot further review of this matter by the Presiding Judge.

5. On September 10, 2013, Mr. Baxter submitted a response to the Bureau's Motion via e-mail, apparently arguing that the Notice was not valid.¹⁵ Mr. Baxter notes that the Red Light Rule includes a provision barring its application when the applicant has filed a timely challenge to the existence or amount of the debt.¹⁶ While he does not present his argument explicitly, Mr. Baxter's submission is read to argue that the Commission's Notice, sent on February 21, 2012, was ineffective because the District Court's judgment was at that time on appeal and, once appealed, not ruled upon until September 10, 2012. Implicit in this argument is

⁵ Enforcement Bureau's Request at 2 ¶ 3.

⁶ *United States v. Glenn A. Baxter*, Order on Motion for Summary Judgment, 841 F.Supp.2d 378, 398 (D.Me 2012).

⁷ *United States v. Glenn A. Baxter*, Order on Plaintiff's Motion to Dismiss, 2012 WL 315509 (D.Me 2012).

⁸ *United States v. Glenn A. Baxter*, Judgment, No. 12-1196 (1st Cir. 2012).

⁹ See Enforcement Bureau's Request at 2 ¶ 3 n.9. ("[Mr.] Baxter did not appeal the Court of Appeals' ruling within 90 days.")

¹⁰ Enforcement Bureau's Request at Attachment 3. The Bureau incorrectly states that the Notice was mailed to Mr. Baxter on February 2, 2012. Enforcement Bureau's Request at 2 ¶ 4.

¹¹ 47 C.F.R. § 1.1910(b).

¹² Enforcement Bureau's Request at Attachment 3.

¹³ *Id.*; See Enforcement Bureau's Request at Attachment 1.

¹⁴ Enforcement Bureau's Request at Attachments 2, 3.

¹⁵ See E-mail from Glenn A. Baxter to Judy Lancaster (Sept. 10, 2013).

¹⁶ 47 C.F.R. § 1.1910(b)(3)(i).

the expectation that the Commission would serve an additional Notice before Mr. Baxter's application would be dismissed.

Red Light Rule

6. The Red Light Rule requires in Section 1.1910(b)(2) that action be withheld on any applications submitted "by any entity found to be delinquent in its debt to the Commission."¹⁷ The Rule further provides that "[t]he entity will be informed that action will be withheld on the application until full payment or arrangement to pay any . . . debt owed to the Commission is made and/or that the application may be dismissed."¹⁸ Section 1.1910(b)(3) states that, "[i]f a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the [above-described] notice . . . the application or request for authorization will be dismissed."¹⁹ Together, these provisions provide the applicant with a 30-day extension from final dismissal during which the applicant can act to salvage its application by paying or making arrangements to pay its delinquencies.

7. The Red Light Rule protects applicants that challenge delinquent debts from prematurely having their applications terminated.²⁰ Mr. Baxter is entitled to that protection in this instance. The Notice cited by the Bureau, February 21, 2013, was sent before all appeals had concluded. It advised Mr. Baxter that his debt was delinquent as a matter of law. However, under Commission rules, Mr. Baxter's debt could not be declared delinquent until the District Court proceeding and any further appeals had concluded.²¹ The last appeal was made to the First Circuit, which decided the case on September 10, 2012, a date well subsequent to the aforesaid notice.

8. The record is clear that Mr. Baxter is *now* delinquent in the payment of his forfeiture.²² Mr. Baxter's \$10,000 forfeiture remains unpaid and he has made no arrangements to pay it.²³ However, a notice that incorrectly determines that a debt was delinquent is faulty and cannot, over a year later, provide a valid notice of delinquency. Notice must be provided when the debt is delinquent as a matter of law, which only came about in this instance after the conclusion of Mr. Baxter's appeal on September 10, 2012. The Bureau has not presented

¹⁷ 47 C.F.R. § 1.1910(b)(2).

¹⁸ *Id.*

¹⁹ 47 C.F.R. § 1.1910(b)(3).

²⁰ "The provisions of paragraphs (b)(2) and (b)(3) of this section will not apply if the applicant has timely filed a challenge through an administrative appeal or a contested judicial proceeding either to the existence or amount of the non-tax delinquent debt owed the Commission." 47 C.F.R. § 1.1910(b)(3)(i).

²¹ "Accordingly, where an applicant has filed a timely administrative appeal, or a contested judicial proceeding, challenging either the existence of, or the amount of, a debt, such debt *shall not be considered delinquent* for purpose of the red light rule." *Amendment of Parts 0 and 1 of the Commission's Rules*, Report and Order, MD Docket No. 02-339, 19 FCC Rcd. 6540, 6542-43 ¶ 6 (2004) (emphasis added).

²² Enforcement Bureau's Request at Attachment 2 (Letter from U.S. Attorney Tom Delahanty II and Assistant U.S. Attorney Evan J. Roth dated August 14, 2014 stating that on February 1, 2013, the Justice Department sent Mr. Baxter a demand for payment of the judgment entered by the Maine District Court and Mr. Baxter has not responded, nor has he paid, nor made arrangements to pay the forfeiture.)

²³ Enforcement Bureau's Request at Attachment 3 (Email from Cheryl Collins to Judy Lancaster, Aug. 14, 2013, stating that Mr. Baxter has been notified of his delinquent debt by letter from the agency dated February 21, 2012, and advising that he has not paid his forfeiture or made arrangements to pay it).

evidence demonstrating that Mr. Baxter was notified of the delinquency of his forfeiture payment after the conclusion of his appeals. Nor has the Bureau provided evidence that Mr. Baxter had actual knowledge that his payment was legally delinquent. Thus, Mr. Baxter's renewal application cannot be dismissed under the Red Light Rule at this time, and the Presiding Judge will not issue a stay of this proceeding because a stay is not ripe until the Commission gives Mr. Baxter the proper Notice of Withholding of Action.

9. As the judicial and administrative appeals of Mr. Baxter's forfeiture have now been concluded, his application is no longer protected from dismissal by Section 1.1910(b)(3)(i) of the Red Light Rule.²⁴ If the Bureau wishes to pursue dismissal of Mr. Baxter's application under the Red Light Rule, he must be provided with a new notice that conforms to the requirements of Section 1.1910(b)(2).

10. Accordingly, IT IS ORDERED that the Enforcement Bureau take all necessary steps to inform Mr. Baxter of his delinquency as the Red Light Rule requires.

11. IT IS FURTHER ORDERED that the Enforcement Bureau SHALL provide a status report on or before November 4, 2013, that either (1) notifies the Presiding Judge of the date and means by which Mr. Baxter was officially informed by the Commission of the delinquency of his debt or (2) details the steps the Bureau has taken to that end.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Chief Administrative Law Judge

²⁴ On September 17, 2012, Mr. Baxter submitted a petition seeking Commission reversal of the Forfeiture Order in light of the First Circuit's affirmance of the District Court's judgment on September 10, 2012. He has repeatedly renewed that petition, most recently on August 15, 2013. The Presiding Judge reads Mr. Baxter's petition to be an application for review of the Forfeiture Order on the ground that he did not have sufficient notice of what was required of him under Commission rules. The filing deadline for applications for review of such orders is 30 days from the date of the order's release. 47 C.F.R. § 1.115(d). As the Forfeiture Order was released on March 29, 2006, his application submitted on September 17, 2012, is untimely. Additionally, to the Presiding Judge's knowledge, Mr. Baxter made no other application for review within 30 days of that March 29 date. Even if he had done so, Mr. Baxter did not argue in the District Court proceeding that there was a pending application for Commission review of the matter that made United States Attorney's enforcement action untimely. Mr. Baxter's failure to raise any such argument indicates that Mr. Baxter had exhausted his administrative remedies. *See* Fed.R.Civ.P. 12(h) (providing, generally, that a party waives all defenses and objections that it fails to present either by motion, answer or other response); *see also Gajewski v. United States*, 327 F.2d 239, 242 (8th Cir. 1964) (holding that failure to abide by a statute that provided adequate and exclusive administrative remedies to challenge an agency decision precludes a complaining party's subsequent ability to raise objections in action brought by the agency to enforce such action.) With all valid administrative and judicial remedies exhausted and the judgment on the forfeiture long since becoming final, Mr. Baxter is now subject to paragraphs (b)(2) and (b)(3) of Section 1.1910 of the Commission's rules, *i.e.* the Red Light Rule.