UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil No. 10-435-JAW**
	)	
GLENN A. BAXTER,	)	
	)	
Defendant.	)	

REPLY STATEMENT OF MATERIAL FACTS

The United States, by undersigned counsel, pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56, hereby submits this Reply Statement of Material Facts in support of its motion for summary judgment.

We note at the outset that defendant has failed entirely to comply with Local Rule 56(c). That rule requires a party opposing a motion for summary judgment to "admit, deny or qualify the facts by reference to each numbered paragraph of the moving party's statement of material facts." It also requires the opposing party to "support each denial or qualification" of the moving party's facts "by a record citation." Defendant has fulfilled neither of those requirements.

Rule 56(c) also requires an opposing party that wishes to set forth its own facts to do so with "each [fact] set forth in a separately numbered paragraph and supported by a record citation." Defendant has submitted a statement of "material facts as to where a genuine issue needs to be tried before a requested jury by trial de novo," but has failed to comply with Rule 56(c).

Pro se litigants are not excused from complying with the rules governing the conduct of litigation, including the Local Rules of this judicial district. *Philbrick v.*

Maine Dept. of Health and Human Services, 616 F.Supp.2d 123, 126 n. 3 (D. Me.) (citing *FDIC v. Anchor Props.*, 13 F.3d 27, 31 (1st Cir. 1994)); *see also Jackson v. Town of Waldoboro*, 751 F.Supp.2d 263, 266 n.1 (*pro se* status does not relieve a party from the rules governing summary judgment proceedings).

Rule 56(f) sets forth the consequences for a failure to comply with its requirements. Unless "properly controverted" in the manner set forth by the Rule, the moving party's facts "shall be deemed admitted." Moreover, the Court "may disregard any statement of fact," such as those set forth by defendant, that are "not supported by a specific citation to record material." Thus, we object to the entirety of defendant's statement of facts, and this case properly should proceed as though all of the facts set forth in the government's statement of undisputed facts were admitted and as though defendant has set forth no facts of his own.

Nevertheless, in order to assist the Court in resolving this matter, we will attempt to respond to the facts set forth in defendant's statement. Because defendant's alleged facts are not numbered, it is impossible for us to respond to them in the manner set forth in Rule 56. We will refer instead to the page number of defendant's statement of material facts and a brief description of the assertion:

Pages 1-2, 7-8, 10-11 (pecuniary transmissions): Defendant admits that his transmission referred listeners to his website, but he claims that the referral was made in a non-pecuniary context. It is a legal question (addressed at pages 4-5 of the government's Reply) whether references to a website that contains commercial inducements are pecuniary even if the references are made outside of a commercial context.

Pages 2-3, 6-7, 8-9, 11 (interference): Defendant admits that his transmission was made on top of (*i.e.*, it interfered with) other amateur operators, but makes a legal argument (addressed at page 3 of the government's Reply) that FCC Rule 96.111(b)(6) authorized him to engage in interference. *See* Declaration of William T. Cross ¶¶ 4, 5 ("Cross Dec."). Defendant also claims that a November 1989 letter from the FCC authorized him to interfere with other stations. That is a legal argument, which we address at page 4 of the government's Reply. *See* Cross Dec. ¶ 4. Defendant also claims that he is entitled to interfere with other stations as long as he publishes a schedule of transmissions 30 days in advance. That is a legal argument, which we address at page 3 of our reply. *See* Cross Dec. ¶ 5.

Pages 3-6 (response to FCC inquiry about station control): Defendant claims that the FCC's inquiry seeking information about defendant's method of controlling his station was vague and that his response to the FCC's inquiry therefore was adequate as a matter of law. Those are legal arguments and are addressed at page 2 of the government's Reply. Defendant also claims that a November 1989 letter from the FCC excused him from responding to the FCC's inquiry. That legal argument is addressed at page 7 of the government's Reply. Defendant also claims that a 2004 letter from the FCC excused him from responding to the FCC's inquiry. That legal argument is addressed at page 2 of the government's Reply.

Pages 9-10 (genuineness of transcript): Defendant claims that the FCC's transcript of a December 1, 2004, transmission is not genuine. We deny that the transcript does not accurately reflect the contents of a transmission made on that date. We admit, however, that the recordings of the transmission from which the transcript was

prepared were made not by FCC officials but by non-FCC personnel who then sent the recordings to the FCC. *See* Government Reply at 6 & n.2.

Respectfully submitted,

Richard W. Murphy
Attorney for the United States
Under Authority Conferred by
28 U.S.C. § 515

Dated: June 23, 2011

/s/ Evan J. Roth, AUSA
Evan J. Roth
U.S. Attorney's Office
100 Middle Street
East Tower, 6th Floor
Portland, ME 04101
(207) 771-3245
Evan.roth@usdoj.gov

OF COUNSEL:

Joel Marcus
Office of General Counsel
Federal Communications Commission
445 12th St. SW
Washington, DC 20554
202-418-1740