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

In the Matter of)	
)	File No. EB-04-BS-111
Glenn A. Baxter)	NAL/Acct. No. 200532260001
RR 1 Box 776)	FRN 0013164975
Belgrade Lakes, ME 04918)	
)	
Licensee of Amateur Radio Station K1MAN)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 7, 2005

By the District Director, Boston Office, Northeastern Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”),¹ we find Glenn A. Baxter, licensee of Amateur Radio Station K1MAN, apparently liable for a monetary forfeiture in the amount of twenty-one thousand dollars (\$21,000). We conclude that Mr. Baxter apparently willfully and repeatedly interfered with ongoing communications of other stations in violation of Section 97.101(d) of the Commission’s Rules (the “Rules”).² We further conclude that Mr. Baxter apparently 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 Mr. Baxter apparently willfully and repeatedly failed to file requested information pursuant to an Enforcement Bureau (“Bureau”) directive. We further find that Mr. Baxter apparently willfully engaged in broadcasting in violation of 97.113(b) of the Rules³ and apparently willfully failed to exercise control of his station in violation of Section 97.105(a) of the Rules.⁴

II. BACKGROUND

2. Mr. Baxter has a license to operate an amateur radio station, call sign K1MAN. Mr. Baxter also is executive director of the American Amateur Radio Association (“AARA”), which has a website at www.K1MAN.com. Mr. Baxter uses his amateur station to advertise his website, which offers items for sale, including an annual newsletter published by “Glenn Baxter, K1MAN” for forty-five (45) dollars per year. The website also provides a schedule of K1MAN radio transmissions.

3. In response to numerous complaints of deliberate interference caused by transmissions

¹47 U.S.C. §503(b).

²47 C.F.R. § 97.101(d).

³47 C.F.R. §§ 97.113(a)(3), §97.113(b).

⁴47 C.F.R. §97.105(a).

from Mr. Baxter's Amateur station K1MAN to ongoing radio communications of other stations, including stations participating in the Salvation Army Team Emergency Radio Net, the Bureau issued a Warning Notice to Mr. Baxter on September 15, 2004. The Bureau requested information from Mr. Baxter with regard to the method of station control and what action, if any, was being taken in response to the complaints of interference.⁵ The Warning Notice also reminded Mr. 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.⁶ The April 14, 2004 letter also cautioned Mr. Baxter that if he continued to use the station for pecuniary interest by advertising his website he could be subject to further enforcement action.

4. By letter dated October 14, 2004, Mr. Baxter responded to the September 15, 2004 Warning Notice stating "[n]o corrective actions are necessary at K1MAN" and "[n]o changes are needed with regard to station control which is in full compliance with all FCC rules." Mr. Baxter's letter further stated that "K1MAN is in full compliance with all FCC rules, state laws, and federal laws. I encourage you to take 'enforcement actions' and look forward to seeing you in court (s)."⁷ Mr. Baxter's response did not provide the required information requested regarding station control.

5. The Bureau issued a second Warning Notice to Mr. Baxter on October 29, 2004.⁸ The Warning Notice explained that Mr. Baxter's response to the September 15, 2004, Warning Notice was insufficient and explained Mr. Baxter's obligations as a licensee to furnish the information requested by the Bureau. The Bureau provided Mr. Baxter an additional twenty days to provide the specific information requested. The Warning Notice also indicated that the Bureau had received two additional complaints of deliberate interference caused by Mr. Baxter's station. The Bureau requested information from Mr. Baxter regarding the identity of the control operator and method of station control for station K1MAN on the dates and times specified in the recently-received interference complaints.

6. Mr. Baxter responded by letter dated November 2, 2004, stating that "[m]y letter to you dated 14 October 2004 in response to your letter to me dated 15 September 2004 provided all the information required by FCC rules and by federal law."⁹ Mr. Baxter did not provide any information regarding the identity of the control operator or the method of station control.

7. On November 25, 2004, Commission personnel monitored Mr. Baxter's Amateur station on 14.275 MHz between 9:21 a.m. and 2:12 p.m. EST. During that time, Mr. Baxter's station transmitted numerous on-the-air references to his web page at www.K1MAN.com. On November 27, 2004, Mr. Baxter's Amateur station K1MAN began transmitting on top of ongoing communications at 5:54 p.m. EST on 3.890 MHz, disrupting the communications by the other licensees.

8. On November 30, 2004, agents from the FCC's Boston Office conducted an inspection of

⁵Letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau, September 15, 2004.

⁶The April 14, 2004 letter was a follow-up to letters dated January 29, 2002 and March 4, 2003. In the January 29, 2002 letter, the Bureau detailed numerous complaints that were received alleging rule violations by Mr. Baxter's station. The letter advised Mr. Baxter about the Commission's rules regarding interference, station control, broadcasting, and pecuniary interest. The March 4, 2003 letter advised Mr. Baxter that the Bureau continued to receive complaints about his station's operation, indicating that he had not corrected the problems outlined in the January 29, 2002 letter.

⁷Letter from Glenn A. Baxter, October 14, 2004.

⁸Letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau, October 29, 2004.

⁹Letter from Glenn A. Baxter, November 2, 2004.

Mr. Baxter's Amateur station K1MAN. The method of station control appeared to be a telephone line connected to an interface board, which was connected to the transmitter. Mr. Baxter claimed that he monitored the station from a mobile receiver when not at the transmitter and that he could control the transmitter through a land-line or cellular phone. During the inspection, Mr. Baxter demonstrated that he could control the transmitter.

9. On December 1, 2004, on the frequencies 3.975 MHz and 14.275 MHz, Mr. Baxter's station K1MAN transmitted a pre-recorded program lasting nearly seventy minutes, which consisted of an interview by Mr. Baxter with Mr. Jeff Owens. During the broadcast, Mr. Baxter explained that Baxter Associates was a firm that engaged in "management consulting, executive search and executive career management." The program consisted of a lengthy broadcast of the telephone interview with Mr. Owens. Mr. Baxter explained the fees involved, how Mr. Owens could invest in franchises of Baxter Associates, and how Mr. Baxter planned to market the franchises of Baxter Associates. Nothing in the program related to Amateur radio and no station call sign was given until the conclusion of the seventy-minute program.

10. On December 8, 2004, FCC agents found that Baxter's station K1MAN commenced transmitting at 7:10 p.m. EST on top of existing radio communications on 3.890 MHz. On December 19, 2004, from 5:44 p.m. to 6:30 p.m. EST, on frequency 3.975 MHz, Mr. Baxter's Amateur station K1MAN broadcast transmissions of an apparently defective pre-recorded audio tape, which resulted in the repeated transmission of a nine-word phrase, and segments thereof, without any intervention of a control operator and without the identification of the station's call sign. Mr. Baxter's Amateur station went off the air abruptly at 6:30 p.m. EST in mid-sentence.

11. On March 30, 2005, monitoring personnel observed station K1MAN advertising the www.K1MAN.com web site at approximately 7:19, 7:28, 7:33 and 8:05 P.M. EST on 3.890 MHz. On March 31, 2005, at 7:28 P.M. EST, monitoring personnel observed transmissions from station K1MAN begin on top of existing communications on 3.890 MHz.

III. DISCUSSION

12. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission there under, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.¹⁰ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹¹

13. Section 97.101(d) of the Rules states that "[n]o amateur operator shall willfully or

¹⁰Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹¹Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

maliciously interfere with or cause interference to any radio communication or signal.”¹² On November 27, 2004, December 8, 2004, and March 31, 2005, Baxter’s Amateur station K1MAN commenced transmitting on top of existing communications on 3.890 MHz in apparent willful and repeated violation of 97.101(d) of the Commission’s rules.

14. 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. On November 25, 2004 and March 30, 2005, Mr. Baxter’s station repeatedly transmitted references to his website, which offers various products for sale, including a monthly newsletter published by Glenn Baxter and offered for sale for forty-five dollars per year. In addition, on December 1, 2004, Station K1MAN transmitted a seventy-minute interview with a person who was considering whether to retain Baxter Associates, an employment-search firm owned by Mr. Baxter. During the transmission, Mr. Baxter discussed fees, investments, and franchising opportunities. We find that Mr. Baxter apparently willfully and repeatedly violated Section 97.113(a)(3) of the Rules on each of these occasions by transmitting communications regarding matters in which he has a pecuniary interest.

15. Section 308(b) of the Act provides that the Commission “during the term of any (such) 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”¹³ Although Mr. Baxter replied in part to the Bureau’s demand for information in the Warning Notices dated September 15, 2004 and October 29, 2004, Mr. Baxter failed to provide information regarding how the station is controlled and the identity of the control operator. Mr. Baxter’s statements that “[n]o corrective actions are necessary” and “[n]o changes are needed with regard to station control” are insufficient. We therefore conclude that Glenn A. Baxter apparently willfully and repeatedly failed to comply with a Bureau directive to file information regarding control of Station K1MAN.

16. Section 97.113(b) of the Rules prohibits, with limited exceptions not applicable here, an Amateur station from engaging in any form of broadcasting or transmitting one-way transmissions. Section 97.3(a)(10) of the Rules defines broadcasting as “transmissions intended for reception by the general public.”¹⁴ We find that the pre-recorded seventy-minute interview with a person interested in retaining Baxter Associates, during which there was no station identification, constitutes a “broadcast” and an impermissible one-way transmission. Therefore, Mr. Baxter apparently willfully violated Section 97.113(b) of the Rules.

17. Section 97.105(a) of the Rules provides that the control operator must ensure the proper operation of the station.¹⁵ On December 19, 2004, station K1MAN repeated the same pre-recorded phrase,

¹²Section 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.

¹³47 U.S.C. § 308(b).

¹⁴47 C.F.R. §97.3(a)(10).

¹⁵47 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 97.103(b), the station licensee is responsible for the proper operation of the station in accordance with the FCC 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. Mr. Baxter is the licensee of Station K1MAN and there is no evidence in the Commission’s records that Mr. Baxter has designated another control operator.

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 Section 97.119(a) of the Rules.¹⁶ The continuous transmissions of the same pre-recorded phrase and segments thereof, and the abrupt ending of those transmissions in mid-sentence without identification, suggests that Mr. Baxter did not exercise control of his station. We conclude that Mr. Baxter apparently willfully violated Section 97.105(a) of the Rules.

18. Pursuant to The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount is \$7,000 for willful or malicious interference, \$3,000 for failure to file required information, and \$3,000 for violation of transmitter control.¹⁷ There are no base forfeiture amounts for violations of the rules prohibiting broadcasting or pecuniary interest in Part 97 of the Commission's rules. We conclude, however, that violations of the Part 97 rules prohibiting broadcasting and the transmission of any communication in which the operator has a pecuniary interest are similar to violations of the Commission's requirements pertaining to broadcasting of lotteries and contests, which carry a base forfeiture amount of \$4,000 for each such violation.¹⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁹ Applying the Forfeiture Policy Statement, Section 1.80, and the statutory factors, a \$21,000 forfeiture is warranted.

IV. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,²⁰ and Section 1.80 of the Commission's Rules,²¹ Glenn A. Baxter, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR 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 Section 97.101(d) of the Rules, willful violation of Section 97.105(a) of the Rules, willful and repeated violation of Section 97.113(a)(3) of the Rules, and willful violation of Section 97.113(b) of the Rules.

20. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release of this **NOTICE OF APPARENT LIABILITY**, Mr. Baxter **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

21. 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.

¹⁶47 C.F.R. §97.119.

¹⁷12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁸*Id.*

¹⁹47 U.S.C. § 503(b)(2)(D).

²⁰47 U.S.C. § 503(b).

²¹47 C.F.R. § 1.80.

Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

22. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Boston Office, 1 Batterymarch Park, Quincy, MA 02169-7448 within thirty (30) days from the release date of this Notice of Apparent Liability for Forfeiture and must include the NAL/Acct. No. referenced in the caption.

23. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

24. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²²

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

FEDERAL COMMUNICATIONS COMMISSION

Dennis V. Loria
District Director
Boston Office
Northeastern Region
Enforcement Bureau

²²47 C.F.R. § 1.1914.