

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

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

**MOTION FOR PARTIAL VOLUNTARY DISMISSAL
AND INCORPORATED MEMORANDUM OF LAW**

Pursuant to Federal Rules of Civil Procedure 41(a)(2) and 54(b), the United States of America, on behalf of its agency, the Federal Communications Commission (“FCC”), respectfully requests that the Court enter final Judgment in favor of the United States for \$10,000 with respect to the two summary judgment claims that were resolved in favor of the United States. As for the remainder of the claims in this case, the United States respectfully requests that they be voluntarily dismissed, with prejudice, and without costs or fees to any party, in order to avoid the need for further litigation on matters for which the time and expense exceeds the potential added recovery.

BACKGROUND

On October 27, 2010, the United States filed a Complaint (Docket #1) regarding five FCC violations by Defendant Glenn Baxter (“Baxter”): (1) willfully and repeatedly failing to respond to a Bureau directive; (2) willfully and repeatedly causing interference with ongoing communications; (3) willfully and repeatedly broadcasting communications in which Baxter had a pecuniary interest; (4) willfully broadcasting impermissible one-way communications; and (5)

willfully failing to exercise station control (Docket #1 at pages 2-3). The United States requested imposition of a total forfeiture amount of \$21,000 (Docket #1 at page 5).

On November 5, 2010, the United States filed a First Amended Complaint (Docket #4) that was limited only to the first four FCC violations: (1) willfully and repeatedly failing to respond to a Bureau directive; (2) willfully and repeatedly causing interference with ongoing communications; (3) willfully and repeatedly broadcasting communications in which Baxter had a pecuniary interest; and (4) willfully broadcasting impermissible one-way communications (Docket #4 at 8). For those four violations, the United States requested a total recovery of \$18,000 (Docket #4 at 10). With respect to the previously alleged fifth violation, the United States voluntarily declined to pursue the additional \$3000 monetary forfeiture due to the death of the only FCC agent to observe Baxter fail to exercise station control (Docket #23 at 10).

On May 18, 2011, the United States moved for summary judgment regarding the first four FCC violations: (1) willfully and repeatedly failing to respond to a Bureau directive pursuant to 47 U.S.C. § 308(b); (2) willfully and repeatedly causing interference with ongoing communications pursuant to 47 C.F.R. § 97.101(d); (3) willfully and repeatedly broadcasting communications in which Baxter had a pecuniary interest pursuant to 47 C.F.R. § 97.113(a)(3); and (4) willfully broadcasting impermissible one-way communications in violation of 47 C.F.R. § 97.113(b) (Docket #23 at 6-8). On June 23, 2011, the United States filed its summary judgment reply, which conceded that there were disputed issues of fact regarding the fourth violation (impermissible one-way communications), which was subject to a \$4000 forfeiture amount (Docket #32 at page 6). Accordingly, the United States' reply confirmed that for the purpose of summary judgment, it was requesting a total of \$14,000 (\$18,000 minus \$4000) as

follows: \$3000 for the failure to respond; \$7000 for the interference; and \$4000 for the pecuniary interest (Docket #32 at pages 6-7).

On January 10, 2012, the Court granted summary judgment in favor of the United States regarding the first two violations and imposed forfeiture amounts, respectively, of \$3000 and \$7000, for a total of \$10,000 (Docket #23 at 38). With respect to the third violation, regarding Baxter's pecuniary interest, the Court denied summary judgment due to the disputed issues of material fact (Docket #38 at 1).

DISCUSSION

At this stage in the litigation, when a party has succeeded on some of its claims, and it is willing to forego the remainder of its claims, there are two applicable Federal Rules of Civil Procedure. First, pursuant to Rule 54(b), when an action presents more than one claim for relief, the Court may direct entry of final Judgment as to one or more (but fewer than all) claims "only if the court expressly determines that there is no just reason for delay." Second, pursuant to Rule 41(a)(2), the Court may grant the Plaintiff's motion to voluntarily dismiss an action "on terms that the court considers proper." When a Rule 41(a)(2) motion requests dismissal with prejudice, the Court should grant the motion. *Smoot v. Fox*, 340 F.2d 301, 303 (6th Cir. 1964).

In this case, the Court should enter final Judgment based on an express determination that there is no just reason for delay. The United States is satisfied with the summary judgment rulings in its favor, and it has determined that the time and expense of further litigation does not justify the potential added recovery. In accordance with the summary judgment ruling, the United States therefore request entry of final Judgment as follows:

1. Judgment for \$3000 in favor of the United States and against Baxter for willfully and repeatedly failing to respond to a Bureau directive pursuant to 47 U.S.C. § 308(b);

2. Judgment for \$7000 in favor of the United States and against Baxter for willfully and repeatedly causing interference with ongoing communications pursuant to 47 C.F.R. § 97.101(d);
3. Voluntary dismissal with prejudice of all other claims asserted by the United States against Baxter in the above-captioned action; and
4. Each party to bear its own costs and fees.

Respectfully submitted,

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

Dated: January 19, 2012

/s/ Evan J. Roth, AUSA
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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2012, I electronically filed a Motion for Partial Voluntary Dismissal with the Clerk of Court using the CM/ECF system and have mailed by United Postal Service, the document(s) to the following non-registered participants:

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