

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

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

HEARING DESIGNATION ORDER

Adopted: January 10, 2011

Released: January 12, 2011

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this *Hearing Designation Order*, we commence a hearing proceeding before a Commission Administrative Law Judge to determine whether the above-captioned application filed by Glenn A. Baxter for renewal of his license for Amateur Radio Station K1MAN should be granted. As discussed below, the record before us indicates that Baxter has apparently willfully and repeatedly engaged in unlawful Commission-related activities, including causing interference to ongoing communications of other amateur stations, transmitting communications in which he had a pecuniary interest, failing to file requested information pursuant to an Enforcement Bureau (Bureau) directive, engaging in broadcasting without communicating with any particular station, and failing to exercise control of his station. Based on the information before us, we believe that Baxter's apparent continuing course of misconduct raises a substantial and material question of fact as to whether he possesses the requisite character qualifications to be and remain a Commission licensee. Accordingly, we hereby designate his application for hearing.¹

II. BACKGROUND

2. Baxter is the licensee of Amateur Radio Service Station K1MAN. By letter dated January 29, 2002, the Bureau detailed numerous complaints that were received alleging rule violations by Baxter's station, and advised Baxter about the Commission's rules regarding interference, station control, broadcasting, and pecuniary interest.² On April 14, 2004, the Bureau warned Baxter that enforcement action would be taken if he failed to correct deliberate interference being caused by his station, and cautioned Baxter that he could be subject to further enforcement action if he continued to use the station for pecuniary interest by advertising his website.³

3. On September 15, 2004, the Bureau issued a Warning Notice to Baxter in response to complaints that transmissions from his station had caused deliberate interference to ongoing radio

¹ See 47 U.S.C. § 309(e).

² See Letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau, January 29, 2002. By letter dated March 4, 2003, the Bureau advised Baxter that it had continued to receive complaints about his station's operation, indicating that he had not corrected the problems outlined in the previous letter.

³ See Letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau, April 14, 2004. Baxter is the executive director of the American Amateur Radio Association ("AARA"). Baxter used his amateur station to advertise the AARA's website, which offers items for sale.

communications of other amateur stations, including stations participating in the Salvation Army Team Emergency Radio Net.⁴ The Bureau requested information from Baxter with regard to the method of station control and what action, if any, he was taking in response to the complaints of interference. Baxter responded on October 14, 2004, stating that “[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.”⁵ Baxter’s response did not provide the requested information regarding station control.

4. On October 29, 2004, the Bureau issued a second Warning Notice to Baxter.⁶ The Warning Notice stated that Baxter’s response was insufficient and explained Baxter’s obligations as a licensee to furnish the information requested by the Bureau, then provided him additional time to provide the requested information. The Warning Notice also indicated that the Bureau had received additional complaints of deliberate interference caused by Baxter’s station, and requested information from Baxter regarding the identity of the control operator and method of station control for Station K1MAN on the dates and times specified in the complaints. By letter dated November 2, 2004, Baxter stated 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.”⁷ Baxter did not provide any information regarding the identity of the control operator or the method of station control.

5. On November 25, 2004, Commission personnel monitored Baxter’s amateur station transmitting on frequency 14.275 MHz between 9:21 a.m. and 2:12 p.m. During that time, Baxter’s station transmitted numerous on-the-air references to his website. On November 27, 2004, Baxter’s station began transmitting at 5:54 p.m. on frequency 3.890 MHz, disrupting ongoing communications by other licensees. On December 1, 2004, on frequencies 3.975 MHz and 14.275 MHz, Baxter’s station transmitted a pre-recorded interview between Baxter and a person interested in Baxter Associates, which Baxter explained was a firm that engaged in “management consulting, executive search and executive career management.” Baxter explained the fees involved, how Baxter planned to franchise Baxter Associates, and how one could invest in a franchise. Nothing in the program related to Amateur radio, and no station call sign was given until the conclusion of the seventy-minute program.

6. At 7:10 p.m. on December 8, 2004, Commission personnel again monitored Baxter’s station commencing transmission while radio communications were ongoing on frequency 3.890 MHz. On December 19, 2004, from 5:44 to 6:30 p.m., Baxter’s station broadcast repeated transmission on frequency 3.975 MHz of a nine-word phrase, and segments thereof, without any intervention of a control operator and without station identification until the station abruptly went off the air. On March 30, 2005, Commission monitoring personnel again observed Station K1MAN advertising Baxter’s website at approximately 7:19, 7:28, 7:33, and 8:05 p.m. on frequency 3.890 MHz. On March 31, 2005, at 7:28 p.m., monitoring personnel again observed transmissions from Station K1MAN begin while communications were ongoing on frequency 3.890 MHz.

7. On June 7, 2005, the Bureau issued a Notice of Apparent Liability and Forfeiture (*NAL*) to Baxter,⁸ based on a determination that he had willfully and repeatedly interfered with radio communications on November 27, 2004, December 8, 2004, and March 31, 2005, by commencing to

⁴ See Letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau, September 15, 2004.

⁵ See Letter from Glenn A. Baxter, October 14, 2004.

⁶ Letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau, October 29, 2004.

⁷ Letter from Glenn A. Baxter, November 2, 2004.

⁸ Glenn A. Baxter, *Notice of Apparent Liability for Forfeiture*, File No. EB-04-BS-111 (EB, Boston Office June 7, 2005). Baxter submitted a reply on June 16, 2005, denying any liability for the forfeiture amount on procedural grounds, but not substantively responding to the apparent violations set forth in the *NAL*.

transmit on frequency 3.890 MHz while the channel was being used by other stations, in apparent willful and repeated violation of Section 97.101(d) of the Rules.⁹ The Bureau also found that Baxter apparently willfully and repeatedly violated Section 97.113(a)(3) of the Rules on November 25, 2004, December 1, 2004, and March 30, 2005, by transmitting communications regarding matters in which he has a pecuniary interest,¹⁰ and that Baxter 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 (the Act).¹¹ Additionally, the Bureau found that Baxter apparently willfully violated Section 97.113(b) of the Rules¹² by transmitting the pre-recorded seventy-minute interview about Baxter Associates, during which there was no station identification. Lastly, because Baxter's station repeated the same pre-recorded phrase, and segments thereof, for forty-five minutes on December 19, 2004, after which the transmissions ended abruptly without station identification, the Bureau concluded that Baxter did not exercise control of his station, thereby apparently willfully violating Section 97.105(a) of the Rules.¹³

8. Baxter filed the above-captioned application to renew the license for Station K1MAN on July 22, 2005.¹⁴ On March 29, 2006, the Bureau issued a monetary forfeiture to Baxter, as proposed in the *NAL*.¹⁵ The instant proceeding pertains to the pending renewal application, and addresses whether, in light of events subsequent to the issuance of the *Forfeiture Order*, Baxter possesses the requisite character qualifications to be and remain a Commission licensee.

9. There is no evidence that Station K1MAN engaged in radio transmissions for several years after the above-captioned renewal application was filed. On Friday, July 10, 2009, Station K1MAN was heard on frequency 14.275 MHz by Commission staff during an unrelated investigation. By Monday, July 13, 2009, the Commission had received several complaints regarding Baxter's non-stop transmitting over the weekend. On July 14, 2009, the Commission received a complaint that, at 1:00 p.m., Baxter willfully or maliciously interfered with other stations' communications by transmitting on top of ongoing communications. On July 16, 2009, Commission personnel monitored Baxter's station on frequency 14.275 MHz. During the monitoring, Baxter's station began transmitting what FCC staff believed to be a pre-recorded program regarding amplifiers, but the transmission was unintelligible.¹⁶ The apparently pre-recorded and unintelligible program continued for eighty minutes without intervention by a control operator until Station K1MAN ceased operating at 2:00 p.m. At 4:00 p.m. that day, Baxter's station began transmitting again, disrupting ongoing communications on 14.275 MHz. Commission personnel monitored Baxter's station again on July 17, 2009, and at 1:28 p.m. determined that it was

⁹ 47 C.F.R. § 97.101(d) (“No amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.”).

¹⁰ 47 C.F.R. § 97.113(a)(3) (“No amateur station shall transmit . . . [c]ommunications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer.”).

¹¹ 47 U.S.C. § 308(b). 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”

¹² 47 C.F.R. § 97.113(b) (“An amateur station shall not engage in any form of broadcasting, nor may an amateur station transmit one-way communications except as specifically provided in these rules”).

¹³ 47 C.F.R. § 97.105(a) (“The control operator must ensure the immediate proper operation of the station, regardless of the type of control.”).

¹⁴ FCC File No. 0002250244 (filed July 22, 2005).

¹⁵ See Glenn A. Baxter, *Forfeiture Order*, File No. EB-04-BS-111, 21 FCC Rcd 3071 (EB, Northeast Region 2006) (*Forfeiture Order*). A civil action to enforce the *Forfeiture Order* is pending. See United States of America v. Glenn A. Baxter, *Complaint*, Case No. 1:10-cv-00435-JAW (D. Me. filed Oct. 25, 2010).

¹⁶ It appeared that either the recording was damaged, or the play speed was set too fast.

transmitting on frequency 14.275 MHz while other radio communications were ongoing. This continued until the licensee who had been on this channel vacated the frequency.¹⁷ At 4:45 p.m. on July 25, 2009, while a station in Spain was transmitting signal reports on the frequency of 14.275 MHz to amateur stations engaged in a contest, Baxter began transmitting on top of this station's communication, ultimately forcing the Spanish station to relocate to frequency 14.279 MHz in order to continue the contest.¹⁸ Through 2010, the Bureau continued to receive complaints about Station K1MAN broadcasting one-way communications.

III. DISCUSSION

10. Pursuant to Section 309(e) of the Act, the Commission is required to designate an application for evidentiary hearing if a substantial and material question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity.¹⁹ The character of an applicant is among those factors that the Commission considers in determining whether the applicant has the requisite qualifications to be a Commission licensee.²⁰ Violations of the Act or the Commission's rules are predictive of licensee behavior and directly relevant to the Commission's regulatory activities.²¹

11. Section 333 of the Act provides that no person shall willfully or maliciously interfere with or cause interference to any radio communications of licensed stations.²² Similarly, Section 97.113(b) of the Commission's Rules generally prohibits broadcasting one-way communications on amateur service frequencies.²³

12. Since 2002, Baxter has been warned repeatedly to refrain from intentionally interfering with radio communications of other amateur stations; broadcasting²⁴ without communicating with any particular station; transmitting communications in which he has a pecuniary interest; and to maintain control of his station, among other things. Despite these warnings, the evidence before us indicates that Baxter continues, after issuance of the *NAL* and *Forfeiture Order*, to engage in such activities, in flagrant and intentional disregard of the Act and the Commission's Rules.

13. We find that Baxter's continuing course of conduct raises questions as to whether he possesses the requisite character qualifications to remain a Commission licensee. Baxter's history of FCC-related transgressions and apparent contempt for the Commission's regulatory authority are patently

¹⁷ Multiple licensees were engaged in the ongoing communications that were interrupted by Baxter's transmission, and several of them filed complaints with the Commission regarding this incident.

¹⁸ A member of the Commission's staff, while operating his amateur station on his own time, was one of the licensees attempting to communicate with the Spanish station when Baxter began broadcasting.

¹⁹ 47 U.S.C. § 309(e).

²⁰ See 47 U.S.C. § 308(b); see also Policy Regarding Character Qualifications in Broadcast Licensing, *Policy Statement and Order*, 5 FCC Rcd 3252, 3252 (1990) (*Character Policy Statement*), recon. on other grounds, 6 FCC Rcd 3448 (1991), modified on other grounds, 7 FCC Rcd 6564 (1992). The *Character Policy Statement* is applicable to amateur and other wireless radio licensees. Leslie D. Brewer, *Order To Show Cause, Notice of Order of Suspension, Notice of Opportunity for Hearing, and Notice of Apparent Liability for a Forfeiture*, 16 FCC Rcd 5671, 5674 ¶ 12 (2001) (*Brewer*).

²¹ *Brewer*, 16 FCC Rcd at 5674 ¶ 12.

²² 47 U.S.C. § 333; see also 47 C.F.R. § 97.101(d).

²³ 47 C.F.R. § 97.113(b).

²⁴ "Broadcasting" is defined in the amateur service rules as "[t]ransmissions intended for reception by the general public, either direct or relayed." 47 C.F.R. § 97.3(a)(10).

inconsistent with his responsibilities as a licensee and belie any suggestion that he can be relied upon to comply with the Commission's rules and policies in the future. Consequently, we will commence a hearing proceeding before an administrative law judge to provide Baxter with an opportunity to demonstrate whether, in light of events subsequent to the issuance of the *Forfeiture Order*, his above-captioned application should be granted.

IV. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(e), the captioned application IS DESIGNATED FOR HEARING in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order*, upon the following issues:

- a) To determine whether Glenn A. Baxter willfully and/or repeatedly violated Section 333 of the Communications Act of 1934, as amended, and Section 97.101(d) of the Commission's Rules, by willfully or maliciously interfering with radio communications;
- b) To determine whether Glenn A. Baxter willfully and/or repeatedly violated Section 97.113(b) of the Commission's Rules by broadcasting one-way communications on amateur frequencies;
- c) To determine whether Glenn A. Baxter willfully and/or repeatedly violated Section 97.105 of the Commission's Rules by failing to ensure the immediate proper operation of his station;
- d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Glenn A. Baxter is qualified to be and remain a Commission licensee;
- e) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the captioned application filed by Glenn A. Baxter should be granted.

15. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.221(c) of the Commission's Rules, 47 C.F.R. § 1.221(c), in order to avail himself of the opportunity to be heard, Glenn A. Baxter, in person or by his attorney, SHALL FILE with the Commission, within twenty calendar days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

16. IT IS FURTHER ORDERED that, pursuant to Section 1.221(c) of the Commission's Rules, 47 C.F.R. § 1.221(c), if Glenn A. Baxter fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period, a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administrative Law Judge SHALL DISMISS the captioned application with prejudice for failure to prosecute.

17. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

18. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(e), the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above SHALL BE on Glenn A. Baxter.

19. IT IS FURTHER ORDERED that a copy of this *Hearing Designation Order* or a summary thereof SHALL BE PUBLISHED in the Federal Register.

20. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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