

JUL 20 2012

Federal Communications Commission
Office of the Secretary

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)

To: Marlene Dortch, Secretary
Attn: Richard L. Sippel, Chief Administrative Law Judge

ENFORCEMENT BUREAU'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS

The Enforcement Bureau (Bureau), pursuant to Order, FCC 12M-34 (ALJ rel. July 17, 2012) and Section 1.325 of the Commission's rules, 47 C.F.R. § 1.325, moves for an order compelling Glenn A. Baxter (Baxter) to produce documents requested by the Bureau. In support whereof, the Bureau states as follows:

1. Baxter provided his response to the Bureau's Second Request for Production of Documents on July 10, 2012.¹ As discussed more fully below, the Response fails to fully and completely produce the requested documents. The Response, for example, does not provide any recordings or Documents responsive to any of the enumerated requests nor does it assert that such responsive materials do not exist. As addressed below, the Response instead provides incomplete or otherwise deficient responses to the Bureau's requests and raises meritless objections. Accordingly, Baxter should be ordered to

¹ See Baxter's [Response To] Enforcement Bureau's Second Request For Production Of Documents (Response).

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promptly respond more fully and completely to the Second Document Request, as described below.

2. Pursuant to Sections 1.325 and 1.311(b) of the Commission's rules, Baxter is required to produce "tangible things,"² such as the items requested in the Bureau's Second Document Request, that are "relevant to the hearing issues"³ and that appear "reasonably calculated to lead to discovery of admissible evidence."⁴ The Bureau's document requests relate directly to the issues enumerated in paragraph 14 of the Hearing Designation Order, specifically whether Baxter (a) willfully or maliciously interfered with radio communications; (b) broadcast one-way communications on amateur frequencies; and/or (c) failed to ensure the immediate and proper operation of his station.⁵ Thus, each of the Bureau's inquiries seeks recordings and Documents that constitute permissible discovery under the Commission's rules. Specific Bureau requests and Baxter's responses thereto are discussed below.

3. **Request Nos. 1-4.** These requests seek recordings of specifically described transmissions over Station K1MAN. In response to each of these requests Baxter states that "K1MAN is not required to keep a log or archive recordings." Whether Baxter is required to maintain such recordings or he does so voluntarily is of no matter with regard to providing materials responsive to these requests. If Baxter does not have, and has never had, the requested recordings he must clearly so state, as directed in the Bureau's Second Document Request. Baxter does not deny having documents and recording responsive to

² 47 C.F.R. §§ 1.325, 1.311(b).

³ *See id.*

⁴ 47 C.F.R. § 1.311(b).

⁵ *See Glenn A. Baxter*, Hearing Designation Order, 26 FCC Rcd 231, 235 (2011) (HDO).

these requests, and information found on his website indicates that he maintains many recordings of Station K1MAN transmissions.⁶ Baxter also objects to these requests on the basis that the information sought “would add nothing to this proceeding additional to the many recordings already made of K1MAN transmissions and currently in the possession of the Commission.” Whether Baxter believes such materials would contribute anything to this proceeding is not a lawful objection to a document request. See Section 1.311(b), which states that tangible materials such as records are within the scope of permissible discovery if they are reasonably calculated to lead to the discovery of admissible evidence. The requested materials clearly satisfy this test. Accordingly, Baxter should be ordered to promptly produce the recordings and documents encompassed in Request Nos. 1-4.

4. **Request No. 5.** This request seeks “recordings of all instances in which Station K1MAN transmitted a communication or signal that caused interference, whether maliciously or willfully or otherwise, to any other amateur radio station or amateur radio operator, and all Documents related thereto.” Baxter’s Response states that “K1MAN has never caused such alleged interference.” This statement is inconsistent with other representations that Baxter has made on the same subject. Baxter has previously admitted that Station K1MAN has caused what he characterizes as “incidental interference” with the transmissions of other amateur operators.⁷ Thus, if Baxter has recordings responsive to this

⁶ Baxter’s website notifies amateur radio operators that they may download or receive mp3 recordings of bulletins that have been transmitted “since 1987” over Station K1MAN on behalf of Baxter’s American Amateur Radio Network (IARN) and his International Amateur Radio Network (IARN) organizations. See, for example, <http://k1man.com/AARD.pdf> at 222-223.

⁷ See Defendant’s Response To Plaintiff’s Request For Admissions Dated 11 March 2011 at 1-5, 7-10, *United States v Glenn A. Baxter*, No. 10-cv.000435 – JAW (D. Me., Mar. 11, 2011) (“Defendant does stipulate that K1MAN does transmit legal one way information bulletins according to a strict schedule . . . [and] there can therefore be and sometimes is incidental interference to ongoing communications which may also be on the published transmitting channel by chance . . .”).

request, he is obligated to provide them. If he does not have responsive recordings and documents, he must clearly so state. He has not denied having recordings and documents responsive to this request and his website states that Baxter has recordings of prior Station K1MAN transmissions dating to 1987.⁸ Baxter should be compelled to promptly search for and produce all recordings of all transmissions in which Station K1MAN caused interference, “incidental” or otherwise, to any other amateur radio station or amateur radio operator, and all Documents related thereto.

5. **Request No. 6.** This request seeks “[r]ecordings of all instances in which Station K1MAN transmitted a communication or signal that disrupted in any manner whatsoever communications by any other amateur radio station or amateur radio operator, and all Documents related thereto. Baxter’s Response states that “K1MAN has never caused such alleged interference.” As noted above, Baxter has previously admitted that Station K1MAN has disrupted and caused “incidental interference” with the transmissions of other amateur stations. Baxter does not deny possessing recordings and documents responsive to this request. Baxter’s website states that he has recordings of prior Station K1MAN transmissions dating to 1987.⁹ Consequently, if Baxter has responsive recordings that show interference of any kind and/or has documents related to such interference, he must provide them to the Bureau. In order to ensure that he does so, Baxter should be ordered to promptly search for and produce to the Bureau all recordings and related Documents that are responsive to this request.

6. **Request No. 7.** This request seeks “Recordings of all instances in which Station K1MAN engaged in any form of Broadcasting, and all Documents related thereto.”

⁸ See *supra*, note 6.

As defined in the document request and in the Commission's rules, "Broadcasting" refers to transmissions intended for reception by the general public, either direct or relayed."¹⁰ Baxter's Response states that "K1MAN has never engaged in any form of broadcasting over amateur radio." While the response implies that Baxter has no responsive recordings, it does not clearly state that Baxter does not have the recordings and documents requested. Consequently, Baxter should be ordered to either state that he does not now have, and has never had, any recordings and related documents responsive to this request, or produce recordings and related Documents in his possession or under his control that are responsive to this request.

7. **Request No. 8.** This request seeks "[r]ecordings of all instances in which Station K1MAN engaged in transmitting one-way communications, and all Documents related thereto. Baxter's Response states the "K1MAN has been engaged in one-way transmissions daily since 1987. This request is not relevant and overly burdensome." To the contrary, this request is clearly intended to gather evidence about the designated issue regarding "one-way communications on amateur frequencies" that is found in paragraph 14 (b) of the HDO. It is thus, relevant and falls squarely within the scope of discovery in this proceeding. Consequently, Baxter's objection on the ground of relevancy is without merit and should be overruled. Additionally, Baxter offers no factual details or legal authority to support his statement that the request is overly burdensome. Baxter does not deny that he has recordings and/or documents responsive to this request and his response implies that he has a large number of responsive recordings and/or documents. Statements on Baxter's website also indicate that he has many recordings of prior K1MAN

⁹ See *supra*, notes 6-7.

transmissions.¹¹ Consequently, Baxter should be ordered to promptly produce all recordings and Documents responsive to this Bureau request.

8. **Request No. 9.** This request seeks “[r]ecordings of each interview, advertisement, promotion and public service announcement transmitted over Station K1MAN that are not responsive to Requests 1-8 above, and all Documents related thereto. Baxter’s Response states that “K1MAN has never engaged in advertising and K1MAN has been engaged in one-way transmissions daily since 1987. This request is not relevant and overly burdensome.” Baxter’s response is non-responsive, unsupported, and without merit. The period of time covered by the Second Document Request is from March 30, 2006, not from 1987, as Baxter implies. Baxter does not deny that he has recordings and documents that are responsive to the this request and statements on his website indicate that he has recordings of prior Station K1MAN programming dating to 1987.¹² His unsubstantiated claim that it will be overly burdensome to produce the responsive documents implies that he has so many responsive recordings and/or documents that it will be burdensome to produce them. Baxter, however, has submitted insufficient factual and legal support to justify his refusal to produce the requested recordings and Documents. If Baxter does not have recordings and documents related to each category of items requested by the Bureau, he should clearly so state. Baxter should be compelled to promptly produce the recordings and documents that he does have that are responsive to any part of this Bureau request.

¹⁰ See Enforcement Bureau’s Second Request For Production of Documents at 2; 47 C.F.R. § 97.3(10).

¹¹ See *supra*, note 6.

¹² *Id.*

9. **Request No. 10.** This request seeks “All Documents related to complaints received by Baxter concerning the operation of Station K1MAN.” Baxter’s Response states that “All originals of any such complaints are currently in the possession of the Commission.” This response is unresponsive, unclear, unsupported and deficient because it is inconsistent with the directive in Section 1.325 of the Commission’s rules that requires the party against whom a request for production of documents is made to either comply with, or properly object to, the request within 10 days¹³ and because it provides insufficient information for the Bureau to identify the complaints to which Baxter refers. Baxter does not deny having in his possession, or otherwise having access to, complaints and related documents that are responsive to this request. He should, therefore, be compelled to promptly provide all responsive documents to the Bureau.

10. **Request No. 13.** This request seeks “All Documents that Baxter intends to introduce into evidence at the hearing in the captioned proceeding.” Baxter’s response that such Documents are “[a]lready in the record as far as currently known” is vague and unresponsive because it provides insufficient information for the Bureau to identify and to locate the Documents to which Baxter is referring and it is inconsistent with Section 1.325 of the Commission’s rules, which requires the responding party to either provide the requested documents or object to the document request on grounds of privilege or other proper reason.¹⁴ Baxter does not deny having in his possession, or otherwise having access to, the requested documents. Accordingly, Baxter should be compelled to promptly produce all documents responsive to this request.

¹³ See 47 C.F.R. § 1.325.

¹⁴ *Id.*

11. Based on the foregoing, the Presiding Judge should enter an order compelling Baxter to serve complete and honest responses to the Bureau's Request for Admission Nos. 1-4, 5, 6, 7, 8, 9, 10 and 13 that comply fully with Section 1.325 of the Commission's rules and the instructions contained in the Bureau's Second Document Request.

Respectfully submitted,
P. Michele Ellison
Chief, Enforcement Bureau

A handwritten signature in black ink that reads "Judy Lancaster". The signature is written in a cursive, flowing style.

Judy Lancaster
Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

July 20, 2012

ATTACHMENTS

**ENFORCEMENT BUREAU'S
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

and

**[RESPONSE TO] ENFORCEMENT BUREAU'S
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

**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)	

To: Glenn A. Baxter

**ENFORCEMENT BUREAU'S
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

The Enforcement Bureau ("Bureau"), pursuant to Section 1.325 of the Commission's Rules, 47 C.F.R. § 1.325, hereby requests that Glenn A. Baxter ("Baxter") produce the documents specified herein for inspection and copying. Production shall be made at the offices of the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Suite 4-C330, 445 12th Street, S.W., Washington, DC 20554 (or at some other location that is mutually acceptable to the Bureau and Baxter) within 10 days of the date of this request.

Definitions and Instructions

- a. "Baxter," means Glenn A. Baxter, Amateur Radio Operator and Licensee of Amateur Radio Station K1MAN, FRN No. 0013164975.
- b. "Document" means the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, videotaped, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made,

including but not limited to any book, pamphlet, periodical, contract, agreement, correspondence, letter, facsimile, e-mail, audio and/or video tape, recording, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, song, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minutes, marketing plan, research paper, personnel file, personnel folder, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form) in the possession, custody, or control of Baxter.

c. “Relate to” and “relating to” mean constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, concerns or in any way is pertinent to the specified subject, including documents concerning the preparation of the documents.

d. “All” shall be construed to include the word “any.”

e. “Broadcasting” refers to transmissions intended for reception by the general public, either direct or relayed.

f. Each Document produced shall be identified by the number of the Document request to which it is responsive, and each Document shall be produced in its entirety, even if only a portion of that Document is responsive to a request herein. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be produced.

g. All recordings shall be produced in the form of audio files on a compact disk

(CD-R) which shall be labeled with the date, time, and frequency of each transmission recorded on it.

h. If a Document is responsive to more than one request, all Requests to which it is responsive shall be noted in an attachment to the Document.

i. If a Document responsive to any request herein existed but is no longer or not currently available, or if Baxter is unable for any reason to produce a Document responsive to any request, each such Document shall be identified by author, recipient, date, title, and specific subject matter, and a full explanation shall be provided why the Document is no longer available or why Baxter is otherwise unable to produce it.

j. If any Document produced in response to any request herein is not dated, the date on which the Document was prepared shall be provided. If any Document does not identify its author(s) or recipient(s), the name(s) of the author(s) or recipient(s) of the Document shall be provided.

k. This request is continuing in nature, requiring immediate production if a further or different Document responsive to any request herein comes into the possession, custody, or control of Baxter during the pendency of this proceeding.

l. If production of any Document responsive to any request herein called for by this request is refused pursuant to a claim of privilege, the Document shall be identified by reference to its author, recipient(s) (including any person receiving a copy, regardless of whether that recipient is listed on the Document), date, and subject matter. The basis for the privilege claimed for such Document shall be specified with sufficient precision to permit assessment of the applicability of the privilege involved.

m. If not otherwise indicated, the period of time covered by these document requests

shall be from **March 30, 2006, through the present.**

Documents Requested

1. Recordings of all transmissions over Station K1MAN on frequency 14.275 MHz from 12:01 am local time on July 10, 2009, through and including 11:59 pm local time on July 14, 2009, and all Documents related thereto.

2. Recordings of all transmissions over Station K1MAN on frequency 14.275 MHz from 12:01 am on July 16, 2009 through and including 11:59 pm local time on July 17, 2009, and all Documents related thereto.

3. Recordings of all transmissions over Station K1MAN on frequency 14.275 MHz from 12:01 am local time on July 25, 2009 through and including 11:59 pm local time on July 26, 2009, and all Documents related thereto.

4. Recordings of all instances in which Station K1MAN transmitted over or on top of any ongoing radio communication or signal, and all Documents related thereto.

5. Recordings of all instances in which Station K1MAN transmitted a communication or signal that caused interference, whether maliciously or willfully or otherwise, to any other amateur radio station or amateur radio operator, and all Documents related thereto.

6. Recordings of all instances in which Station K1MAN transmitted a communication or signal that disrupted in any manner whatsoever communications by any other amateur radio station or amateur radio operator, and all Documents related thereto.

7. Recordings of all instances in which Station K1MAN engaged in any form of Broadcasting, and all Documents related thereto.

8. Recordings of all instances in which Station K1MAN engaged in transmitting

one-way communications, and all Documents related thereto.

9. Recordings of each interview, advertisement, promotion and public service announcement transmitted over Station K1MAN that are not responsive to Requests 1-8 above, and all Documents related thereto.

10. All Documents related to complaints received by Baxter concerning the operation of Station K1MAN.

11. All Documents that identify a control operator for Station K1MAN.

12. All station records for Station K1MAN, including, but not limited to, records of station operations for Station K1MAN.

13. All Documents that Baxter intends to introduce into evidence at the hearing in the captioned proceeding.

Respectfully submitted

P. Michele Ellison, Chief
Enforcement Bureau

Judy Lancaster
Attorney
Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420
July __, 2012

CERTIFICATE OF SERVICE

Judy Lancaster, an Attorney Advisor, in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this ___ day of July 2012, sent by first class United States mail and e-mail, copies of the foregoing "Enforcement Bureau's Second Request For Production of Documents" to:

Glenn A. Baxter
Station K1MAN
RR 1, Box 776
Belgrade Lakes, ME 04918
Email to: k1man14275@aol.com and Institute@K1MAN.com

and by hand-delivery to

Chief Administrative Law Judge Richard L. Sippel
Federal Communications Commission
445 12th Street, S.W., Suite 1-C768
Washington, D.C. 20054

Judy Lancaster

CERTIFICATE OF SERVICE

Judy Lancaster, an Attorney Advisor, in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 14th day of June 2012, sent by first class United States mail and e-mail, copies of the foregoing "Enforcement Bureau's Motion For Additional Limited Discovery" to:

Glenn A. Baxter
Station K1MAN
RR 1, Box 776
Belgrade Lakes, ME 04918
Email to: k1man14275@aol.com and Institute@K1MAN.com

and by hand-delivery to

Chief Administrative Law Judge Richard L. Sippel
Federal Communications Commission
445 12th Street, S.W., Suite 1-C768
Washington, D.C. 20054

Judy Lancaster

See www.k1man.com/fcc1.pdf and www.k1man.com/fcc2.pdf

Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of)	WT Docket No. 1107
GLENN A. BAXTER)	FCC File No. 0002250244
Application to renew License for Amateur Radio)	FRN 0013164975
Service Station K1MAN)	

One copy mailed postage prepaid this date to the Hearings Division, Enforcement Bureau, Suite 4-330, 445 12th Street, S.W., Washington, D.C. 20554

Three copies mailed postage prepaid this date to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554

Faxed this date to FCC Administrative Law Court number (202) 418-0195

E-mailed this date to Richard.Sippel@fcc.gov, Mary.Gosse@fcc.gov, Judy.Lancaster@fcc.gov, Gary.Shonman@fcc.gov

ENFORCEMENTS BUREAU'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

1. K1MAN is not required to keep a log or archive recordings, and also objects to this request since it would add nothing to this proceeding additional to the many recordings already made of K1MAN transmissions and currently in the possession of the Commission.
2. K1MAN is not required to keep a log or archive recordings and objects to this request since it will add nothing to this proceeding additional to the many recordings already made and in the possession of the Commission.
3. K1MAN is not required to keep a log or archive recordings and objects to this request since it will add nothing to this proceeding additional to the many recordings already made and in the possession of the Commission.
4. K1MAN is not required to keep a log or archive recordings and objects to this request since it will add nothing to this proceeding additional to the many recordings already made and in the possession of the Commission.

5. K1MAN has never caused such alleged interference but has, instead been interfered with. Originals of complaint affidavits regarding this are currently in the possession of the Commission.
6. K1MAN has never caused such alleged interference but has, instead been interfered with. Originals of complaint affidavits regarding this are currently in the possession of the Commission.
7. K1MAN has never engaged in any form of broadcasting over amateur radio.
8. K1MAN has been engaged in one-way transmissions daily since 1987. This request is not relevant and overly burdensome.
9. K1MAN has never engaged in advertising and K1MAN has been engaged in one-way transmissions daily since 1987. This request is not relevant and overly burdensome.
10. All originals of any such complaints are currently in the possession of the Commission.
11. There are no such documents. Generally, K1MAN has always had a control operator at the control point as required by FCC rules.
12. There are no such records.
13. Already in the record as far as currently known, however, these are continuing requests and the record will be updated before or during the hearing(s).

(signed)

Glenn A. Baxter, P.E.

Dated: 28 June 2012

CERTIFICATE OF SERVICE

Applicant Glenn A. Baxter, P.E., K1MAN hereby certifies that a copy of this brief was on 28 June 2012 e-mailed to Judy.Lancaster@fcc.gov and also mailed, postage prepaid, to Judy Lancaster, Esq., Federal Communications, 445 12th Street, S.W., Suite 4A267, Washington, D.C. 20554.

(signed)

Glenn A. Baxter

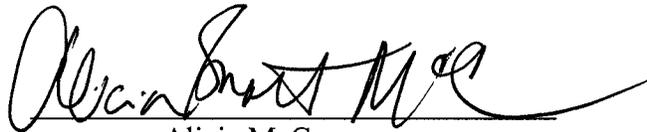
CERTIFICATE OF SERVICE

I, Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, hereby certify that on this 20th day of July, 2012, true and correct copies of the foregoing document, Enforcement Bureau's Motion to Compel Second Request For Production of Documents, were served via e-mail and First-Class Certified – Return Receipt Requested-mail, postage prepaid, on:

Glenn A. Baxter
310 Woodland Camp Road*
Belgrade, Maine 04917
E-mail to: K1MAN14275@aol.com; Institute@K1MAN.com

and by hand delivery to:

Chief Administrative Law Judge Richard A. Sippel
Federal Communications Commission
445 12th Street, S.W., Suite 1-C768
Washington, D.C. 20054


Alicia McCannon

* Baxter's last known address