Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	**)**	
	)	
RESPONSE EFFORTS UNDERTAKEN	**)**	**ET Docket No. 17-344**
DURING THE 2017 HURRICANE SEASON	**)**	

To: The Chief, Public Safety and Homeland Security Bureau

Via: ECFS Electronic Filing

REPLY COMMENTS OF THE CW OPERATORS' CLUB

The CW Operators' Club (CWops) hereby submits its Reply Comments in response to Public Notice DA 17-1180 (released December 7, 2017) (Notice). The Notice requested public input on matters attendant upon overall industry response to the 2017 hurricane season. The focal intention of this filing is to clarify to the Federal Communications Commission (FCC or Commission) several issues contained in Comments filed by the ARRL, the National Association for Amateur (ARRL), which represents about 20-23% of the Amateur Radio licensees in the United States.

Introduction

1. For its part, CWops is an organization of some 1500 active Amateur Radio operators who primarily use International Morse Code (CW, short for Continuous Wave) for message exchange in their FCC-licensed on-air activities. Those activities include message relay, simulated emergency exercises -- and simply chatting, to keep skills honed. It is well recognized that CW is some 6 dB more effective than voice and many data systems in getting messages through. It is considered the mode of last resort in the event of an emergency and it remains commonly used

by thousands of licensees though it is no longer required for obtaining an FCC operator's license. In fact, CWops is training annually more than 300 Amateur Radio licensees to use CW through its CW Academy, with a new Youth CW Academy in the formative stages.

Issues

2. **Data.** Among the regulatory issues ARRL notes in its Comments, at paras. 32-34, is the matter of digital data bandwidth limitations. In its original petition for rulemaking, RM-11708, ARRL asked the Commission to eliminate the symbol rate limitation of Section 97.307(f) of the Rules and to impose a 2.8 kHz bandwidth limit for all data transmissions below 29.7 MHz. But when the Commission issued its Notice of Proposed Rulemaking in WT Docket No. 16-239, the bandwidth limitation requirement for all bands below 29.7 MHz of 2.8 kHz was not included. The benefits of Pactor IV over CW or other modes in cases of emergency under adverse radio conditions are murky at best, in part because despite the waiver granted on September 29, 2017 for use of Pactor IV in the wake of Hurricane Maria, it is reported that only tests were successfully accomplished with no actual emergency traffic conveyed using that mode. What remains most important is that bandwidth protection currently in place below 29.7 MHz by the 300-baud symbol rate limit of Section 97.307(f) of the Rules be maintained. This will protect CW and other modes that could be largely disabled by use of systems with much higher symbol rates. A separate sub-band for 2.8 kHz data above the conventional CW bands below 29.7 MHz, such as those described in Section 97.221 of the Rules, would be more consistent with the approach used in IARU band plans and would assure the integrity of both CW and most data operations. It also would be helpful to the Commission and to spectrum utilization for the ARRL to use the extraordinary technical expertise of its vast membership to address data usage in the bands below 29.7 MHz.

3. **ARPA.** At paras. 35-37 of its Comments, ARRL argues a matter that is not even before the FCC at this time, and hopefully never will be in its current form: The Amateur Radio Parity Act (ARPA). This deeply flawed ARRL-proposed bill, negotiated by ARRL agents with the Community Associations Institute (CAI), was adopted in the House as HR.555, and is stalled in the Senate as S.1534. It is the broadly published view of many real estate experts and attorneys who are also Amateur Radio licensees that the wording of ARPA will result in far fewer Amateur Radio licensees being able to participate in emergency traffic handling than were the bill not adopted. *See, e.g.*, http://www.cq-amateur-radio.com/cq_highlights/2017-cq/2017-08-cq/2017-cq-white-paper.pdf. Regretfully, ARRL never sought the participation of any of those industry experts, choosing instead to use its existing representatives to negotiate language with a vastly capable real estate association. The result is all too evident, and it is important the Commission not be deceived by ARRL into believing that moving forward on ARPA will help American emergency preparedness.

4. The language of the ARPA bills has profound flaws. Chief among them relates to the requirement for prior approval of any outside antenna by the HOA. The typical HOA is inherently disinclined to allow outdoor antennas *ab initio*, else the ARPA bills would not have been drafted in an effort to force them to do otherwise. Section 1 of ARPA gives the HOA power to effectively limit what bands an amateur may use, even indoors, because the provision says that there can be no restriction that precludes communications "in an amateur radio service," not "in any licensed amateur radio band." This means an HOA could permit only operation on 2 meters (a 19-inch whip) because that's in the "amateur radio service" and on its face satisfies the Section 1 requirement. Such an antenna would not have done much to help

during Hurricane Maria, for example, because HF communications were necessary, even by ARRL's own description of events. Moreover, for those amateur radio operators with exclusive-use properties (private homes), the HOA will be incentivized for aesthetic reasons to limit the size of any outdoor antenna.

5. Moreover, the requirement for prior approval constitutes a stark shift in burden because permission for even modest antennas, barely visible or not at all visible, must be affirmatively sought and given. For parity with PRB-1, the HOA should abide by default standards under the bill and then adopted by the FCC, presumably consistent with those set forth in Section 97.15(b). If indeed the goal of H.R. 555 is parity with PRB-1, why is there a burden to seek prior approval? Why is there no requirement that the FCC promulgate a rule like 97.15(b) for these community associations?

5. Interestingly, and apparently missed by ARRL, an HOA that requires payment for snow removal from a common road would fall under the now-federal law engendered by HR.555/S.1534. Currently, the resident of a community where a fee for snow removal of a common road is the only mandatory payment could erect an antenna on his or her property subject only to the usual local zoning requirements. But under ARPA, a new regime takes over, one that requires prior approval by an HOA that likely knows nothing of antennas and is ill-equipped to do more than consult with CAI for guidance, or do nothing. Guidance from CAI means rules that prohibit HF antennas.

6. One legal consequence of H.R. 555 is that a deed-restricted resident who has been successfully using an outdoor stealth wire antenna for years without permission now moves from possible risk of contract breach to the realm of federal law violation. If there is failure to seek and obtain prior approval for an antenna through the HOA, the property owner is in violation of

the statute and associated federal regulations (FCC rules). That is because federal law preempts HOA rules, meaning violation, enforcement, challenge or compliance must be resolved in a federal venue, not in a local state court under contract law. (Note that a CBer caught doing the same thing is subject only to a contractual violation, not federal law, because only the Amateur Radio Service is included in the bill.) Further, to add a bit of complexity and risk to this, an Amateur Radio license when issued or renewed carries a requirement for its holder to comply with all applicable FCC rules and regulations. An unapproved stealth antenna would be a violation of FCC regulations, for which there could be licensing consequences.

7. Also lacking in the legislation is a procedure for the FCC to deal with disputes, unlike the FCC's Over the Air Reception Devices (OTARD) rule under 47 C.F.R. Section 1.4000 that sets standards for requests for waivers and petitions for declaratory rulings. There is no such procedure provided in H.R. 555. Going to a federal court or dealing with a rule violation is not a ride in the park. The experience would likely be both protracted and costly. There should be a mechanism for FCC declaratory rulings or waivers, as in Section 1.4000.

8. Next, under H.R. 555 Section (b)(3), an HOA is permitted to establish reasonable rules concerning height, location, size and aesthetic impact of outdoor antennas. Going further, Section (b)(2) permits the HOA to prohibit installation of an antenna on common property not under the exclusive use or control of the licensee. Thus, an amateur cannot expect approval from an HOA to erect a wire antenna, let alone a beam, on the roof of a multi-story building. An amateur cannot expect approval from an HOA to erect a wire antenna, let alone a beam, on the roof of a duplex condominium. An amateur cannot expect approval from an HOA to erect a wire antenna, let alone a beam, on a sliver of adjoining land to his stand-alone house in a deed-restricted community. So how does H.R. 555 achieve its stated goal of establishing parity in

terms of reasonable accommodation of amateurs with minimal practical regulation to communicate, and to provide, at their own cost, emergency communications? How does an HOA for 5-acre plots deal with an outdoor dipole antenna request? Can a townhouse owner put up a wire on his patio behind his house? The legislation should authorize and direct the FCC to parse out the needs for these and other situations, including multi-unit buildings, to provide a more equitable and meaningful parity to PRB-1 and Section 97.15(b) for amateurs living in all HOA communities.

9. Finally, is there parity with PRB-1? Not quite! Most condominium owners reside in buildings that are exempt from the putative benefits of H.R. 555 because the bill's provisions address only those who have exclusive use or control of their properties. In other words, H.R. 555 may help only a minority of amateurs. CAI was highly successful in crafting the language of this legislation to limit its benefits to a small segment of deed-restricted homeowners.

10. Even for those with HOA properties that might benefit from this legislation (single family dwellings), there are difficulties ahead. Cases decided by the FCC under the OTARD Rule illustrate the challenges because of similarities in much of the important language. 47 C.F.R. Section 1.4000 of the Commission's Rules (the OTARD Rule) prohibits governmental and private restrictions that impair the ability of antenna users to install, maintain, or use over-the-air-reception devices. It was adopted by the Commission to implement Section 207 of the Telecommunications Act of 1996. In one case, a homeowner in a deed-restricted community was denied permission to install a TV antenna on the side of his home near the roof peak. The HOA claimed he could get acceptable reception from a location in the back of the house below the roof line. Under the Rule, a placement preference restriction is permitted provided it does not impair the antenna user's right to install, maintain, or use an antenna covered by the Rule. A

placement restriction impairs if it (1) unreasonably delays or prevents installation, maintenance, or use of the antenna, (2) unreasonably increases the cost of installation, maintenance or use of the antenna, or (3) prevents the antenna from receiving an acceptable quality signal. The burden was on the HOA to rebut the homeowner's assertion that he could not get adequate line-of-sight reception at the HOA's preferred location, but the HOA provided no technical support for its position and lost. *See* Culver, https://apps.fcc.gov/edocs_public/attachmatch/DA-09-1674A1.pdf. It is important to understand that the burden under the OTARD Rule is on the HOA to show that its restrictions comply with the Rule's placement preference conditions. But under H.R. 555, the burden of securing prior approval for an antenna is entirely on the radio amateur, and there is no requirement that the FCC develop further rules to provide non-judicial means for those treated unfairly to seek declaratory rulings or waivers. In short, the considerations applicable to private land use and CC&R communities really are not so different, but H.R. 555 makes them very different. In short, then, ARRL's mention of ARPA in this Inquiry is misplaced. But because it has raised HR.555/S.1534, it is important that the Commission understand that APRA is a step backward for emergency communications by Amateur Radio licensees in the United States.

Conclusion

ARRL's submission offers the Commission useful information, but its characterization of the data bandwidth issues is lacking, and its inclusion of ARPA is both inappropriate and patently misguided.

Respectfully submitted,

By: Daden A. McDonald

Vaden A. McDonald
President, CW Operators, Club

Vaden A. McDonald, NN4K
1868 Trotter's Lane
Stone Mountain, GA 30087
vadenmac@aol.com
770.846.9509