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 N3JT

I, James M. Talens, licensed in the Amateur Radio Service as N3JT for some 58 years, hereby submit my Reply Comments to Public Notice DA 17-1180 (released December 7, 2017) (Notice) in the above-reference proceeding. This Notice requested public input on issues associated with industry response to the 2017 hurricane season. The specific purpose of this submission is to advise the Federal Communications Commission (FCC or Commission) of misleading and incorrect assertions contained in Comments filed by the ARRL, the National Association for Amateur (ARRL), concerning its efforts at lobbying Congress to pass the Amateur Radio Parity Act (ARPA).

ARPA

1. At paras. 35-37 of its Comments, ARRL inappropriately raises ARPA. It is not yet law, and hopefully never will be -- as it is currently drafted. This deeply flawed ARRL-proposed bill, negotiated by ARRL agents with the Community Associations Institute, was adopted in the House as HR.555, and is stalled in the Senate as S.1534. Regretfully, ARRL never sought the

participation of the many licensed radio amateurs who are expert in real estate matters, nor attorneys with broader experience than the ARRL agents or management, who might have helped to shape the language in the proposed bills. As a result, there have been numerous articles published by those experts and attorneys showing that the wording of HR.555/S.1534 will result in far fewer Amateur Radio licensees who will be 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. The Commission should not be deceived by ARRL into believing that moving forward on ARPA will help American emergency preparedness.

2. The language of the ARPA bills has serious flaws. Chief among them is the requirement for prior approval of any outside antenna by the Homeowners Association (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 limit the bands an amateur may use effectively, 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." 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, when 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 may well, for reasons it considers aesthetic, to limit the size of any outdoor antenna.

3. 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 real parity with PRB-1, the HOA should abide by default standards delineated in the bill, then adopted by the FCC, presumably consistent with (though not identical with) those set forth in Section 97.15(b). If the goal of H.R. 555/S.1534 is parity with PRB-1, why is there a burden to seek prior approval? Note that there is no prior approval required for TV Broadcast Service (TVBS) or small Television Receive Only (TVRO) antennas under 47 CFR Section 1.4000. Why is there no requirement that the FCC promulgate a rule like 97.15(b) for community associations?

4. 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, where a fee for snow removal of a common road is the only mandatory payment, "road association" only resident could erect an antenna on his or her property subject only to local zoning requirements. But under ARPA, a new regime begins. The new regime would require 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.

5. One legal consequence of HR.555/S.1534 is that a deed-restricted resident who has been successfully using an invisible or stealth outdoor antenna for years without permission now moves from 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). The process of violation, enforcement, challenge or compliance must be resolved in a federal venue, not in a local state court (perhaps a local municipal or superior court, with less expensive processes) under contract law. A violation of the FCC rules promulgated under ARPA would be a violation of Section

503(b) of the Communications Act of 1934. The radio amateur would be liable for a monetary forfeiture under Sections 1.80(a)(2) and 1.80(b)(7) of the Commission's Rules of up to $122,500. Also, note that a CB'er caught doing the same thing (erecting an outdoor antenna without prior approval) would be subject only to a claim of contractual violation, not a violation of 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.

6. 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 HR.555/S.1534. Going to a federal court or dealing with a rule violation is not a ride in the park. The experience would likely be protracted and costly. There should be a mechanism for FCC declaratory rulings or waivers, as in Section 1.4000.

7. Next, under HR.555/S.1534 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 (however invisible from the ground), let alone a Yagi beam (however small), 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? "Parity" 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.

8. Finally, is there parity with PRB-1? No! Most condominium owners reside in buildings that are exempt from the putative benefits of HR.555/S.1534 because the bills' provisions address only those who have exclusive use or control of their properties. In other words, HR.555/S.1534 could help only a minority of HOA-dwelling amateurs. CAI was highly successful in crafting the language of this legislation to limit its benefits to a small segment of deed-restricted homeowners.

9. 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. At 47 C.F.R. Section 1.4000 (the OTARD Rule) governmental and private restrictions that impair the ability of antenna users to install, maintain, or use over-the-air-reception devices are prohibited. 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

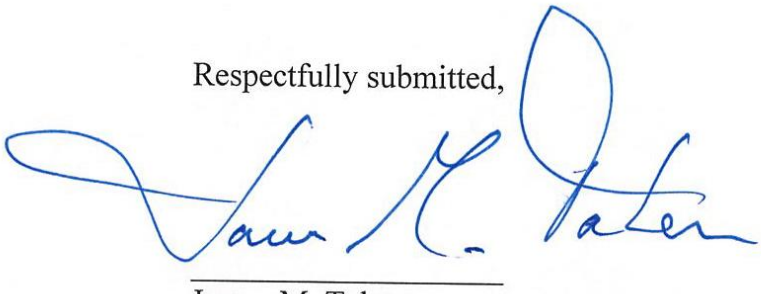
placement preference restriction is permitted, provided it does not impair the antenna user's right to install, maintain, or use an antenna covered by the Rule. A placement restriction "impairs" if it (1) unreasonably delays or prevents installation, maintenance, or use of the antenna, (2) unreasonably 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/S.1534, 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-court 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 HR.555/S.1534 makes *the rules* very different. 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 ARPA is a step backward for emergency communications by Amateur Radio licensees in the United States.

Conclusion

Under ARPA, when there is no emergency, "prior approval" will present *a major hurdle* that will effectively preclude emergency preparedness exercises. When an emergency does occur, the ARPA requirement for "prior approval" will stand as *a bar* to the erection of antennas for emergency communications desperately needed at that time. In sum, ARRL's submission offers the Commission useful information, but its inclusion of ARPA is both inappropriate and, if

examined substantively, is harmful to the Amateur Radio Service as a national resource for emergency preparedness.

Respectfully submitted,



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