

DS LAW, PLLC

1629 K Street NW Suite 300
Washington, DC 20006

David R. Siddall
(202) 559-4690

June 11, 2019

Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20054

Re: Notice of *Ex Parte* Presentation, WT Docket No. 16-239

Dear Ms. Dortch:

On March 27, 2019, the ARRL requested a 90-day pause in the above-referenced proceeding for the purpose of facilitating discussion among commenters of differences expressed in the record of this proceeding. Insofar as possible, we intended our effort to reach a common understanding of issues and to agree on proposals. This letter constitutes an interim report on our efforts.

Today's rapid evolution of multiple technologies inevitably plays out in the Amateur Radio service as elsewhere across the communications landscape and may require occasional regulatory adjustment. The nation benefits from Amateur Radio's fairly flexible regulatory framework that, geared in part toward experimentation, continues to play an important role in advancing technological innovation.¹ But inevitably in Amateur Radio, as in other Commission-regulated areas, adapting current regulation to rapidly evolving technology can be a challenge and requires adjustments to continue to serve valid regulatory purposes without stymying technological change and innovation.

After the ARRL's March 27 letter, the Commission on March 28 published Notice of a Petition for Rulemaking that makes proposals on two of the same subjects that have received extensive comment in Docket 16-239: (1) potential amateur-to-amateur interference among and between stations using different modes and variations thereof, and (2) over-the-air monitoring capabilities in the Amateur Radio service. Almost 600 comments have been filed on this petition

¹ A notable recent example of continuing technological innovation by radio amateurs is the success in developing a break-through digital transmission mode that enables communication pathways utilizing meteors entering earth's atmosphere. This break-through led to follow-on digital techniques now employed daily by radio amateurs to exchange messages with signals that otherwise would not be detectable using traditional means. *See, e.g.*, Joe Taylor, K1JT: "WSJT: New Software for VHF Meteor-Scatter Communication," QST, Dec. 2001 at pp. 46-41; Joe Taylor, K1JT; Steve Franke, K9AN, and Bill Somerville, G4WJS: "Work the World with WSJT-X, Part 1: Operating Capabilities," QST, Oct. 2017 at pp. 30-36.

(RM-11831²), adding to the over 800 comments filed in Docket 16-239 relevant to these and related issues.³

Another significant action that occurred after ARRL's March 27 letter is the decision of one digital messaging service to make available publicly through a Web interface the messages being transmitted by amateur control operators using its backbone. Whether this is necessary or sufficient for amateur self-enforcement purposes has been addressed by many commenters in the two proceedings cited above. Related to this has been substantive discussion on the reach of the pecuniary interest and encryption prohibitions contained in the amateur regulations at Section 97.113(a)(3), (a)(4), and related provisions of the Commission's Rules. This discussion is ongoing in the FCC record of the above proceedings and, less formally, among individuals within the amateur community.

In early April, the ARRL contacted a number of representatives vocal on these issues, not only pro and con, but also somewhere in between. Those who expressed interest in exploring areas of possible agreement have participated in discussions with multiple members of ARRL's Executive Committee, both in person and by phone. Additionally, all ARRL Directors have been contacted and engaged in conversations with their constituents on these issues.

In an attempt to move the process forward on areas identified for negotiation and agreement, the ARRL arranged for an all-day meeting in Washington, D.C. on June 11 to discuss the law, the technologies, and areas for negotiation and agreement. The specific purpose of this meeting was to discuss the subjects raised in Docket 16-239 and RM-11831 that would benefit from regulatory clarification or change appropriate for the new digital technologies and applications that have entered amateur radio and, to the extent possible, to reach agreement on concrete proposals. Everyone understood that compromise among the parties would be necessary to reach agreement.

However, the week before the scheduled meeting, one party notified us that it would send only a non-amateur attorney to represent it in person. This led to concerns being strongly expressed about possible disclosure and misuse of negotiating positions. In particular, some were willing to put forward compromise proposals, but only with confidence that their proposals would not later be disclosed and misused against them if agreements were not reached.

The ARRL responded to these expressed concerns by offering a confidentiality agreement drawn from ones used by others in similar situations. Such an agreement was sent to the parties to offer assurance that each participant's material would be protected from disclosure by the other participants unless the originator consented. The agreement contained no restraint on any party from using their own proposals and material and any other public information in any fashion they desired.

Perhaps because this issue arose only within the week before the proposed meeting when one party designated only their lawyer to attend in person, thereby appearing to undermine the

² FCC, Consumer and Governmental Affairs Bureau, Report No. 3118 (released March 28, 2019).

³ Many have submitted duplicate comments in both proceedings, so the numbers are somewhat exaggerated.

prospect for the principals to discuss options and areas for agreements during the meeting, that multiple parties expressed a desire for more time during which to consider the terms of the confidentiality agreement. Recognizing that without such an agreement some were not comfortable that the meeting structure would be conducive to a fair and frank exchange of ideas, concerns, positions and suggestions without fear of later selective disclosure for unfair purposes, the ARRL believed fairness required it to reset the meeting to a future time. This decision was reluctantly made notwithstanding the significant non-refundable travel and lodging commitments of members of the ARRL's Executive Committee, who had arranged travel to D.C. from as far as California. The ARRL now has asked that by Friday, June 14, the proposed participants suggest alternative dates for rescheduling the meeting.

While there is no guarantee of success, the ARRL's efforts continue to focus on providing a means for all facets of the Amateur Radio service to grow and prosper within its traditional regulatory structure. The ARRL remains committed to protecting the interests of all Amateur Radio operators and will continue to pursue its attempt to address and reconcile the concerns raised in these proceedings.

Respectfully submitted,



David R. Siddall
ARRL Washington Counsel
DS LAW PLLC
1629 K St. NW, Suite 300
Washington, DC 20006
david@davidsiddall-law.com
202-559-4690

cc: Scot Stone, WTB
RM-11831 Docket File