

Donna Searcy  
RM 222

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

21 MAR 1991

IN REPLY REFER TO:

RM-7669 ✓

7230-C

RECEIVED

EX PARTE OR LATE FILED

MAR 26 1991

Honorable Anthony C. Beilenson  
Member, United States House  
of Representatives  
18401 Burbank Boulevard, #222  
Tarzana, California 91356

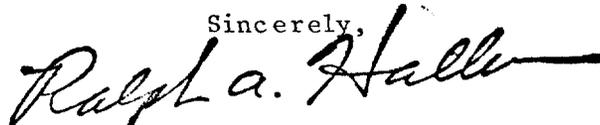
Federal Communications Commission  
Office of the Secretary

Dear Congressman Beilenson:

Thank you for your letter on behalf of Mr. Tom Cagan. Mr. Cagan's letter expresses his concern about the content of messages that amateur stations are authorized to transmit to packet radio system bulletin boards.

On March 6, 1991, the Commission released a Public Notice announcing receipt of a petition for rule making, RM-7669, that addresses this issue. See Report No. 1839 (copy enclosed). The comment period concerning this petition for rule making closes April 8, 1991. Mr. Cagan's letter to you containing his comments on this matter will be filed in the record of this proceeding. The Commission will consider carefully all of the comments filed in this proceeding, including Mr. Cagan's, before taking any further action.

Sincerely,



Ralph A. Haller  
Chief, Private Radio Bureau

Enclosure

# Congressional

*DATE in OBC: 3/21/91*

CONGRESSIONAL CORRESPONDENCE TRACKING SYSTEM  
03/05/91

LETTER REPORT

CONTROL NO.	DATE RECEIVED	DATE OF CORRESP	DATE DUE	DATE DUE OLA(857)
9100711	03/05/91	02/21/91	03/26/91	

TITLE	MEMBERS NAME	REPLY FOR SIG OF
Congressman	Anthony C. Beilenson	BC

CONSTITUENT'S NAME	SUBJECT
Tom Cagan	inq/comp re: illegal business practices

REF TO	REF TO	REF TO	REF TO
FOB	<i>EnfD</i>	<i>PRB/SBD</i>	
		<i>3/15/91</i>	
DATE	DATE	DATE	DATE
03/05/91	<i>3/6/91</i>	<i>3/13/91</i>	

REMARKS:

*Policy matter for PRB*

U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C.

FEB  
illegal

February 21, 19 91

Respectfully referred to

711

Federal Communications Commission  
Director, Congressional and  
Public Affairs  
1919 M. Street, N.W.  
Washington, D.C. 20554

Dear Sir:

We would appreciate your  
addressing the concerns expressed  
in the attached material by our  
constituent, Mr. Thomas A. Cagan.  
Please reply to:

RECEIVED

FEB 21 1991

LEGISLATIVE AFFAIRS

Anthony C. Beilenson

Very respectfully,

ANTHONY C. BEILENSEN  
ACB:STT

M.C., 23rd District

Please reply to:

HON. ANTHONY C. BEILENSEN, M.C.  
18401 Burbank Boulevard, #222  
Tarzana, CA 91356

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FEB 20 1991

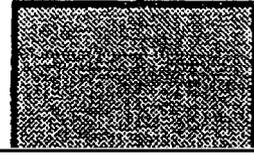
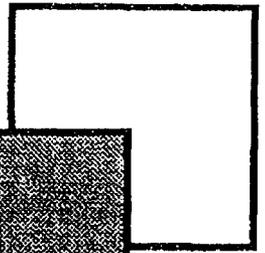
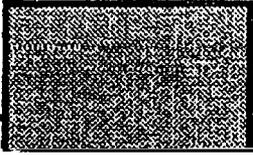
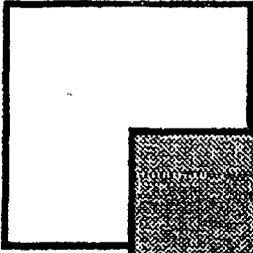
BEILENSON V.O.

FAX Cover Sheet

Office of Hon Tomi Beilenson

From

Tom Cagan KB6NQW  
1648 Fairview Ave



Reply-To: Eldridge

Several BBSs on the east coast have been cited by the FCC for the CONTENT of a packet radio message passing thru their systems. The following is a 4-part BIDDed bulletin I have sent to @USA for national distribution describing the situation. Please feel free to circulate this info on your local distribution channels since it is most important to get the word out.

FYI -- this is the >>LAST<< @USA messages thru W3IWI before I close that distribution channel here!

SB URGENT@USA < W3IWI \$38140\_\_W3IWI  
FCC CITES BBSs FOR @USA MSG (Part 1/4)  
R:910131/0445z 38140@W3IWI.MD.USA.NOAM [Balto/Wash MD/DC]

FCC CENSORS/CENSURES PACKET RADIO  
Tom Clark, W3IWI  
January 30, 1991

Today a number of packet BBSs on the east coast received citations from the FCC's Norfolk (actually Virginia Beach) Field Office which may well spell the end to much of amateur packet radio. According to Jim, WA4ONG the following packet BBSs (and perhaps others) are involved: N3LA, WA3TSW, KA3CNT, KA3T, WA3ZNW, W3IWI, WA4ONG, WB0TAX and N4HOG [my copy of the citation has not yet arrived in the mail -- the details in this message are taken from a copy WA4ONG faxed to me].

The letter dated January 25th from Mr. J. J. Freeman, Engineer in Charge at the Norfolk Office, to WA4ONG states:

"I have received a report that indicates you may have operated your amateur radio station, call sign WA4ONG, in violation of Section 97.113(a) of the Commission's Rules. It appears that you used the Amateur Radio Service to facilitate the business activity of THE COALITION

TO STOP U.S.D. INTERVENTION IN THE MIDDLE EAST."

"Specifically, on or about January 5, 1991 you received a packet radio message originated by amateur radio station WA3QNS. You then transmitted this packet radio message to another amateur radio station. The message was:

{ Here appears a copy of the message sent by WA3QNS@N3LA.PA originated at 22:22z on Jan.5 with the BID #21035 \_N3LA, Subject: Call This Number ASAP. The message listed the business telephones and fax numbers for "The Coalition" as well as a 1-900-xxx-xxxx number to call to "register your voice" I won't repeat the bulletin here, because repeating the bulletin would make it illegal to send this message! }

"This activity was a facilitation of the business affairs of the Coalition to Stop U.S. Intervention in the Middle East and therefor {sic} in violation of Section 97.113(a)."

The FCC citation then contains the boilerplate demanding a response within 10 days explaining circumstances and correct actions, and then closing with a chilling "to determine what, if any, enforcement action is required to insure current and future rule compliance" and a statement that future transgressions will bring fines and/or license revocation.

That's the facts. I'll now discuss some of the implications and recommended actions.

### THE IMPLICATIONS

The implications of the action by the FCC's Norfolk Field Office are absolutely appalling. What is implied is that each and every station in a store-and-forward network is responsible for the actual message CONTENT passing through each node. The BBSs were cited because their calls were in the message header "audit trail". The FCC's action states that each BBS SYSOP is personally responsible for the "correctness" of all messages merely passing through his system. Here, the W3IWI mail switch handles about 10,000 messages per month automatically. There is NO WAY that I can vouch for every bit that passes through!

If the FCC had instead gleaned its information from on-the-air monitoring, then all the THENET/NETROM/ROSE/TCPIP/DIGIPEATER switches handling the message would have been equally culpable! The implication of the FCC action is that a node control operator must read all information and be prepared to shut the system down at the first hint of an "inappropriate" message. It's hard enough to watch the information passing on 1200 BPS links -- imagine the impossibility of "censoring" 56 kBPS or faster channels.

In future networks where redundant channels exist, it is quite possible that a given message will be fragmented and parts of it sent via several parallel paths. The message may exist as a complete entity only at the ends of a virtual path. It would be impossible to implement the censorship the FCC seems to be demanding with such a network, so the "legality" will interfere with development of new technology.

Consider another recent development: amateur packet radio satellites. PACSAT is licensed by the FCC with a US trustee and a cadre of US sysops. PACSAT is, in essence, a flying BBS with the sysops on the ground. In order to screen out "offensive" messages, a ground-based SYSOP has to use a radio channel to verify message CONTENT. But the FCC letter says that the very act of reading an "offensive" message on the radio is illegal. If the Norfolk FCC action is allowed to stand, the logical implication is that PACSATs must be turned off!

A number of us have discussed such issues with responsible individuals at the FCC in Washington ever since the first fledgling days of packet radio. The signal that the FCC sent was that the sole responsibility for the CONTENT of a message lays with the ORIGINATOR. The actions of the Norfolk Office seem to indicate a new policy has been adopted which effectively kills packet radio.

Or -- perhaps -- the Norfolk Engineer in Charge who issued the citations was offended by the particular message and chose to take out his frustrations on all the "King's Messengers" who brought the message to him?

#### W3IWI COMMENTS AND RECOMMENDATIONS

It is ironic that the WA3QNS message that brought down the wrath of the

FCC a number of the BBSs that "touched" his message brought a very vocal response from the packet community informing him that

(1) 1-900-xxx-xxxx are in fact commercial ventures designed to raise money and that a call to the number would cost the caller.

(2) The subject message was probably in violation of 97.113(a) and probably illegal

Personally, I have been silent (but very frustrated) that about the 10% of bulletins addressed @USA (or @ALLUS, @ALLBBS, etc.) that are in poor taste. I have grown tired of blather about censorship, First Amendment Rights and the incredible volumes of hate mail. WA3QNS, by his statements and by the responses to his statements from other folks, has been one of the causes of this frustration. I have longed for the return to normalcy with messages on technical topics and personal communications. I have found it frustrating to pay the electric power bill and pay for the W3IWI hardware for others to engage in marginally offensive "Free Speech". I have wished that the (ab)users of @USA would have exercised more discretion with self-censorship.

But I have gritted what teeth I have left and avoided being a censor. Now, the FCC's CENSURE has left me with no alternative than to be a CENSOR.

Until the FCC tells me that I can do otherwise, I will only release @USA messages that I personally screen and am willing to stake my license on. The priority on my time is such that I don't expect to have time to screen @USA bulletins. Any complaints about my decision will be sent to /dev/null.

{ For other SYSOPs: my way to do this is to have my SWAP file change all @USA etcetera to a dummy address like @HOLD -- thereby preserving any BIDs so I don't get deluged with multiple copies of the same message. Until we get a clarification I would recommend that you also use a similar message condom and practice "Safe BBS". }

packet mail flowing here and I hope the other BBS SYSOPs do likewise. But PLEASE exercise self-policing. The BBS SYSOPs don't want to be held responsible for YOUR words.

The ARRL has already been informed about the Norfolk citations. Because of the potentially devastating impact on all packet radio if the Norfolk situation is allowed to stand, I anticipate a lot of phone calls to be made in the next few days!

73 de Tom, W3IWI

/EX



# PUBLIC NOTICE

Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

News media information 202/632-5050. Recorded listing of releases and texts 202/632-0002.

12047

REPORT NO. 1839

March 6, 1991

## OFFICE OF THE SECRETARY

### PETITIONS FOR RULEMAKING FILED

(Interested persons may file statements opposing or supporting the Petition for Rulemaking listed herein within 30 days. See sections 1.4 and 1.405 of the Commission's rules for further information).

RM No.	Rule Sec.	Petitioner	Date Rec'd.	Nature of Petition
7649	97.113	Tom M. Blackwell, N5GAR P.O. Box 25403 Dallas, TX 75225	2-5-91	Request Amendment of the Commission's Rules to State That Amateur Stations Under Automatic Control are not Responsible for Message Content.

and

RM No.	Rule Sec.	Petitioner	Date Rec'd.	Nature of Petition
7654*	73.202(b)	Warrior Communications  (Filed by Marvin Rosenberg & Frank R. Jazzo Attorneys Fletcher, Heald & Hildreth 1225 Connecticut Avenue, N.W. Suite 400, Washington, D. C. 20036)	12-20-90	Request Amendment FM Table of Allotments to allocate Ch. 260A to Falkville, Alabama at coordinates 34-19-10; 86-46-25.

\*THE ABOVE PETITIONS FOR RULE MAKING WILL BE TREATED AS COUNTERPROPOSALS IN MM DOCKET NO. 90-476. REPLY COMMENTS TO THESE COUNTERPROPOSALS SHOULD BE SUBMITTED IN THIS DOCKET NOT LATER THAN 15 DAYS (RATHER THAN WITHIN 30 DAYS).

7655*	73.(202(b)	First American Communications Corporation P.O. Box 250 Barstow, CA 92312  (Filed by Courtney Flatau President)	12-27-90	Request Amendment FM Table of Allotments to allocate Ch. 244B1, or optionally, Ch. 235B1 or Ch. 249B1 to Baker, California at coordinates 35-15-54; 116-04-25.
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\*THE ABOVE PETITION FOR RULE MAKING WILL BE TREATED AS A COUNTERPROPOSAL IN MM DOCKET NO. 90-530. REPLY COMMENTS TO THIS COUNTERPROPOSAL SHOULD BE SUBMITTED IN THIS DOCKET NOT LATER THAN 15 DAYS (RATHER THAN WITHIN 30 DAYS).

7656*	73.202(b)	Thomas William Hickman, III & Newton Broadcasting Company, Inc.  (Filed by Paul Reynolds, Consultant 415 North College Street Greenville, AL 36037)	1-14-91	Request Amendment FM Table of Allotments to substitute Ch. 292C2 for Ch. 292A at Petal, Mississippi, and modify the license for station WMFM-FM, at coordinates 31-32-50; 89-21-04; substitute Ch. 250A for Ch. 292A at Newton, Mississippi, and modify the license for station WMYQ (FM), at coordinates 32-19-46; 89-10-08.
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RM No.	Rule Sec.	Petitioner	Date Rec'd.	Nature of Petition
7660*	73.202(b)	Fred Hannel d/b/a Campti Broadcasting Company 911 Edward Street Henry, IL 61537	1-28-91	Request Amendment FM Table of Allotments to allocate Ch. 253C3 to Campti, Louisiana at coordi- nates 31-55-26; 93-19-25.
		(Filed by F. W. Hannel, PE)		

\*THE ABOVE PETITION FOR RULE MAKING WILL BE TREATED AS A COUNTERPROPOSAL IN MM DOCKET NO. 90-594. REPLY COMMENTS TO THIS COUNTERPROPOSAL SHOULD BE SUBMITTED IN THIS DOCKET NOT LATER THAN 15 DAYS (RATHER THAN WITHIN 30 DAYS).

7663*	73.202(b)	Anita K. Cochran  (Filed by James P. Riley Attorney Fletcher, Heald & Hildreth 1225 Connecticut Avenue, N.W. Suite 400 Washington, D. C. 20036).	5-18-90	Request Amendment FM Table of Allotments to substitute Ch. 273C1 for 273C2 at North Fort Riley, Kansas and modify the construction permit for station KXDT to specify Ch. 273C1 at coordinates 39-00-00; 96-20-00.
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\*THE ABOVE PETITION FOR RULE MAKING WILL BE TREATED AS A COUNTERPROPOSAL IN MM DOCKET NO. 90-585. REPLY COMMENTS TO THIS COUNTERPROPOSAL SHOULD BE SUBMITTED IN THIS DOCKET NOT LATER THAN 15 DAYS (RATHER THAN WITHIN 30 DAYS).