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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 97 of the)
Commission's Rules to Eliminate) RM-8626
Certain One-Way Communications in)
the Amateur Radio Service Medium)
and High Frequency Bands)
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COMMENTS ON A PETITION FOR RULEMAKING

Bennett Z. Kobb, licensee of Amateur Radio Station KC5CW, hereby responds to the above-captioned Petition filed by Frederick O. Maia.

These comments concern only excessive amateur voice broadcasts on the high frequency bands. These comments take no position regarding non-voice or innocuous, ancillary one-way HF amateur voice transmissions.

I. BROADCASTING IS THE MOST ABSURD FEATURE OF HAM RADIO TODAY

- Incessant one-way operations occupy staggering amounts of phone spectrum airtime, and on this basis alone violate §97.101(a) and (b);
- They emit filibusters, not "messages",¹ and therefore not *bona fide* information bulletins, in violation of §97.3(23) and §97.111(b)(6);
- They transmit over other stations in violation of §97.101(d);
- The one-way nature of these transmissions starkly contrasts with the interactive, participative character of most amateur HF communication;
- Emboldened by years of Commission inaction, more one-way HF operations will sprout unless the FCC does one or more of the following:

¹ The American Heritage Dictionary defines "message" as a *usually short communication* transmitted by words, signals, or other means from one person, station, or group to another (*emphasis added*).

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- (A) It grants the relief sought in the Petition or similar relief;
- (B) It promptly conditions the licenses of violative operators to preclude one-way broadcasts – regardless of the status of pending forfeiture actions;
- (C) It permits one-way broadcasts only on a case-by-case waiver basis, with evaluation especially of the time/ spectrum occupancy of the proposed broadcasts. Waiver applicants would face a high hurdle to demonstrate that their broadcasts would be responsible spectrum uses.

II. ONE-WAY VOICE TRANSMISSIONS BLUR THE DISTINCTION BETWEEN AMATEUR AND INTERNATIONAL BROADCAST STATIONS

The limited permissibility of one-way information bulletins in Amateur Radio does not allow amateurs to conduct broadcasting.²

Nevertheless, some amateurs, through lengthy, repetitious voice transmissions on multiple frequencies, transform their stations into *de facto* International Broadcast Stations.

Part 73, Subpart D, establishes the requirements for International Broadcast Stations. The Commission requires showings of need for the service proposed (§73.731); a high level of transmit power (50 kW minimum; §73.751) and detailed content stipulations (§73.788) among other requirements.

The unsettled international frequency / hour usage system and the extreme congestion in the HF bands, *inter alia*, are a reasonable basis for requiring that private international broadcasters meet substantial thresholds in order to benefit from HF spectrum resources assigned by the United States.

Amateurs who engage in wasteful HF one-way transmissions do not meet these criteria. They subvert the entire structure in the Commission's Rules for international broadcast services.

² §97.113(c) forbids amateur stations from engaging in *any form* of broadcasting (*emphasis added*).

III. THE TRANSMISSIONS AT ISSUE ARE IN FACT BROADCASTS

The Commission must also reject arguments that the interminable, opinionated amateur one-way voice transmissions are not broadcasts because they are not of interest to most members of the general public.³

FCC engineers have already found the transmissions at issue to be broadcasts, even as amateur enforcement languishes in bureaucratic oblivion.⁴

Taken as a whole, the emission mode, scheduling, promotional and programmatic format of the transmissions at issue, together with their near-continuous spectrum occupancy and apparent automated nature, ignorant of ongoing communications, identify them as *a form* of broadcasting and thus prohibited by §97.113(c).

IV. REASONABLE ALTERNATIVES EXIST FOR ONE-WAY INTERNATIONAL SPEECH ON HF BANDS

Private organizations both large and small have qualified for HF broadcast licenses. In addition to this licensed opportunity, virtually anyone may buy airtime for programs on these stations, a long-established practice.

Numerous for-profit and non-profit entities, covering the entire commercial, political and religious spectrum, today broadcast over licensed private International Broadcast Stations with purchased airtime.

Whether by license or otherwise, there is no shortage of authorized vehicles for one-way speech on the international HF bands.

V. AMATEUR BROADCASTING IS NOT LEGITIMATE PROTECTED EXPRESSION

Proponents of one-way voice information bulletin transmission in Amateur Radio celebrate these broadcasts as First Amendment speech and thus a protected use of spectrum.

³ One might just as well argue that some transmissions of private U.S. International Broadcast Stations are *not broadcasts* because they contain racist, anti-Semitic and fringe insurrectionist diatribes of little, if any, interest to most members of the public.

⁴ See Comments of the American Radio Relay League Inc., CI Docket 95-6.

The argument is spurious. Nothing in the First Amendment entitles a speaker to utilize any communications medium available to it in any manner and under any terms and conditions it chooses. It is well established that there is no Constitutional right to transmit radio signals.

Moreover, every Commission licensee waives any claim to the use of the spectrum as against the regulatory power of the United States.⁵

VI. THE PROBLEM IS NOT LIMITED TO A FEW INDIVIDUALS OR FREQUENCIES

Proponents of amateur broadcasting mischaracterize the problem as a mere dispute between individuals over scheduling of amateur transmissions on a handful of frequencies.

Their argument ignores the fundamental incompatibility of broadcasts in the amateur bands with the basis and purpose of the Amateur Service. The coordination of nonbroadcast amateur operations with broadcasts would be very difficult given the prodigious amounts of time and spectrum resources occupied by the broadcasters.

Even if successful, coordination of broadcasts and nonbroadcast uses on any particular frequency would do little to mitigate the impact of one-way transmissions on the Service as a whole.

The cost is too high to give broadcasters the wide berth they demand for their entrenchment. This commenter urges the Commission to entertain the issues raised by the Petition in a Notice of Proposed Rulemaking.

Respectfully submitted,
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⁵ 47 U.S.C. 304.