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

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MAK 21 1996

In the Matter of )  
 )  
Modification and Clarification of )  
Policies and Procedures Governing )  
Siting and Maintenance of Amateur )  
Radio Antennas and Support )  
Structures, and Amendment of )  
Section 97.15(e) of the Rules )  
Governing the Amateur Radio Service )

FCC MAIL ROOM

RM-8763

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To: The Commission

COMMENT ON PETITION FOR RULE MAKING FILED BY  
THE AMERICAN RADIO RELAY LEAGUE

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On behalf of:

Donald L. Stoner, W6TNS

March 20, 1996

U.S. DEPARTMENT OF COMMERCE  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF GENERAL COUNSEL  
U.S. AIR MAIL  
O.H.

## QUALIFICATIONS

This office represents Mr. Donald L. Stoner, amateur radio W6TNS (Stoner), who wishes to comment on the filing made by the American Radio League, Incorporated (the League).

This office also represents Mr. Stoner in an on-going lawsuit against his condominium association, 440 West, Inc. This action was initiated approximately five years ago and is filed in the Circuit Court, In and For The County of Pinellas, Florida.

## SUMMARY

Donald L. Stoner, W6TNS, (Stoner) wishes to comment on the American Radio Relay League (the League) Petition which has been assigned RM-8763. For reasons to be described, Mr. Stoner feels qualified to provide information additional to that supplied by the League.

Stoner concurs fully with the comments of the League. However, he believes that they have not sufficiently stressed the area which relates to Conditions, Covenants and Restrictions (CC&Rs). He also feels that the Commission has abrogated their authority in regulating communication to those who control the usage of covenant restricted communities. These bodies are, in fact, determining who may and who may not communicate using their federally licensed equipment which includes the antenna system). Only the Commission has the authority to do this and by ignoring the true effect of the CC&Rs the FCC is permitting abridgment of individuals' Federal rights to use their license. Further, virtually all covenant restricted communities forbid amateur radio antennas in any way, shape or form. This is in direct affront

to the "reasonable accommodation" provisions in PRB-1.

CC&Rs represent a direct violation of ones civil rights and freedom of speech guaranteed by the Constitution. While the Courts have held that there is no inherent right to communicate, the Commission implies by granting a Station License that this is a valuable and useful document which carries certain rights, privileges and benefits. In enforcing restrictive covenants, governing organizations destroy the value of this license and withdraw the privileges and benefits granted by the United States Government and if the FCC permits this the value of a license is greatly diminished if not destroyed.

**Specifically, Stoner requests that the Commission:**

- (1) Reestablish its right to regulate amateur radio and amateur radio antennas even though they may be located in a covenant or deed restricted community.
- (2) Enforce the laws they have already created. As a minimum, the Commission should create rules which enforce the "reasonable accommodation" provisions of PRB-1 to all communities inclusive of community associations, cooperative, townhouses, homeowner's associations and condominiums.

Stoner is also the provider of a "homepage" on the World-Wide Web of the Internet called The Restrictive Covenants Homepage:

(<http://www.webcom.com/~sj1/STONER/ANTENNA.html>)

The homepage also provides a correspondence reply form so that readers can send messages to Stoner regarding their unique circumstances as they relate to restrictive covenants. Stoner has received hundreds of messages regarding the hardships faced by the correspondent regarding restrictions operating their ham radio stations.

While most of the comments which follow are related to condominium living in the State of Florida, they are equally applicable to other forms of restricted communities in other areas. As the League points out, virtually all new housing developments are subject to covenant regulation. If the Commission ignores the fact that amateur radio operators continue to face a mounting group of restrictions affecting their rights to practice ham radio the FCC is ignoring reality.

Extrapolating the numbers for the State of Florida, is interesting. There are approximately 38,000 amateurs who are permanent residents in the state, and significantly more come to Florida during the winter. By conservative estimates 15-20 percent live in deed restricted communities and most are prevented in one way or another from communicating with their friends or providing emergency services. This represents a significant resource in terms of knowledge, capability and performance that is not being used.

Some of the stories, related by these people, are truly heartbreaking. Typically, an amateur and his spouse will retire after working many years. They elect to move to the south, often Florida, and spend their remaining years in a comfortable climate and would have the time to serve their communities with amateur radio service. Further, they typically will purchase a condominium so they are no longer burdened with painting, planting, yard maintenance and the myriad of other chores endured by homeowners everywhere.

Before purchasing a condominium, they typically, come face-to-face with the realities of restrictive covenants which abrogate their amateur radio rights. As the League points out, many amateur do not understand the "fine print" found in the massive condominium documents (the documents supplied the undersigned weighed 4.6 pounds!). Further, the newcomer seldom uses

the skills of a real estate attorney to advise them about their purchase.

If they do read and understand the documents, they discover they will not be permitted to operate an amateur radio station from their new home. Essentially, they are given the choice between a comfortable home and abandoning the many friendships they have made over decades of ham radio operation.

Often it is the elderly who move to the South and purchase a condominium. As nature takes its course, some of these amateurs become physically handicapped, as is the undersigned. Restricted communities make no provision for accommodating these people.

Often those who move to the South spend a major portion of their life savings to pay for their condominium. They seldom have the funds available to oppose antenna restrictions. Further, they are reluctant to oppose condominium associations or "make ripples" and some may even experience a deep-seated fear they would lose their home by doing so.

Elderly amateurs represent a significant but abandoned resource. They have the time to be "Official Observers", handle traffic and messages for others, provide on the air guidance to newcomers as well as the benefit of their years of experience. However, much of this knowledge is wasted when they are restricted from on-the-air operation.

Because of CC&Rs, amateurs are routinely prevented from enjoying and providing the benefits of the Amateur Radio Service as covered in Part 97.1 (Basis and Purpose) of the Commission's Rules and Regulations.

**THE STATION LICENSE**-The Commission grants individuals a station license under Part 97.5 of the Federal Communications Commission Rules and Regulations. In various parts of this section, the Commission refers to *amateur station and station apparatus*.

While the Commission had transmitting equipment specifically in mind with reference to these terms, an amateur station is not complete, and is not capable of communication, without an antenna. Thus, it is reasonable to state that an *amateur station* includes the required antenna and that without an antenna, the *station apparatus* is not complete.

It is also reasonable to conclude that in granting a station license, the Commission grant covers not only the transmitter, but the transmitting antenna.

**DEED RESTRICTED COMMUNITIES**-Conditions, covenants and restrictions (CC&Rs) are created for the benefit of the majority. CC&Rs regulate appearance, usage and activities of the community in the best interest of the majority. Stoner recognizes this fact, and the need for such regulations, but he feels that antenna restrictions directly thwart the will and desire of the Commission and represent a case of the tail wagging the dog. Why should telephone antennas, television antennas, cable systems, satellite dishes, cellular phone, 900 MHZ systems, etc., be permissible but amateur radio antennas or systems be restricted. The Association's right to create restrictive covenants denying amateur radio operators the right to install antennas effectively wipes out all of the licensee's rights and privileges.

It has been said that a planned community, such as a condominium, is like a tiny nation. In Florida, as in the majority of other states, community association, deed restricted communities, condominiums and cooperatives are all creatures of the state. Their ability to exist is typically through enabling legislation of that respective State Government. In fact, all of the above said communities are governed by State statutes which are completely silent on protecting amateur radio operator's rights. It is universal that covenants and restrictions must be reasonable. Unfortunately, Courts are reluctant to step in to protect amateur radio operators

where the Court's feel the FCC should be the enforcing body. Without additional guidance from the FCC wherein the FCC would make an affirmative statement that amateur radio operators rights shall remain intact no matter where they live and that the laws protecting them are not left at the gates of their community, amateur radio will wither on the vine and die. The Courts will take action to police restrictive actions placed on amateur radio in deed restricted communities if the FCC to regulate these abusive restrictions if the FCC would simply state that the rights of amateurs' in deed restricted communities remains intact and that amateur radio operators must be afforded reasonable accommodations therein. . All that is necessary to enable the Court to police amateur's rights in the future is a restatement of PRB-1 such that there is no argument that amateur radio operators rights are any different depending on where they live. If we truly live in a classless society, amateurs should not be reduced to second class citizens by virtue of their address.

Association Boards represent the best and worst characteristics of a governing body. One can be elected to a board, whether they are competent or not. The manifestation of this, as it relates to amateur radio, appears in the condominium documents. In almost every case the condominium documents incorporate a typical "boiler plate" paragraph that reads:

*No owner or occupant of any apartment shall install wiring for electrical or telephone installations, nor install any type of antenna, machines or air conditioning units.*

This paragraph must be accepted by radio amateurs in order to purchase property in the restricted community because the Courts have refused to strike down these restrictions without clear guidance from the FCC.

In some cases, the community totally usurps the authority of the Commission. The

Pittsford Code considers the following to be structures and permitted:

*Driveways, sidewalks, retaining walls, fences, residential post-lights under 10 feet in height, and simple antennae capable of receiving (but not transmitting) electronic signals.*

Note that transmitting antenna in any form are forbidden. there is no provision for "reasonable accommodation" in either of these clauses. This violates the spirit and intent of PRB-1 and is directly contradictory to the intent of Congress.

What could reasonable accommodation mean? A dipole antenna system could be hidden in an attic. A resonant loop could be hidden under the eaves of a house. A fine wire, such as common #40 stainless steel fishing line attached to a tree or pole, would be virtually invisible. A simple wire antenna could be mounted on the flat roof of a condominium, where it cannot be seen. The Board could permit one radio station, at the community or recreational center, available to all FCC licensed amateurs. The Board could develop an emergency plan for the community which would incorporate a resident amateur and his or her equipment. Not one of these suggestions would be detrimental to the community and in some cases, particularly those which are emergency related, could be helpful. Few if any condominiums consider "reasonable accommodation", because they are not required to do so by the FCC or the Courts.

**CONCLUSION-**The Commission has the legal and moral authority to eliminate or minimize the hardship, inconvenience and interference with amateur radio operation by the unfair imposition of restricted covenants. We believe that the Commission must reestablish their authority in this area and, at a **minimum**, create Rules and Regulations that insure compliance with the "reasonable accommodation" provisions of PRB-1 as it relates to deed restricted communities.

The undersigned respectfully prays that the Federal Communications Commission redress this situation by requiring reasonable accommodation on the part of those who regulate covenant restricted communities to the amateur radio operator.

Respectfully submitted,



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