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Federal Communications Commission  
Office of Secretary

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

In the Matter of )  
 )  
Amendment of Parts 0 and 1 of the )  
Commission's Rules to Improve the )  
Procedures for Addressing Serious )  
Rule Violations in the Amateur )  
Radio Service, and to Create a )  
Private Sector Complaint Procedure )

RM- \_\_\_\_\_

To: The Commission

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**PETITION FOR RULE MAKING**

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**The American Radio Relay  
League, Incorporated**

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## SUMMARY

The American Radio Relay League, Incorporated, the national association of amateur radio operators in the United States, by counsel requests that the Commission issue a Notice of Proposed Rule Making proposing to amend Part 0 and Part 1 regulations as per the attached Appendix, to create procedures for the further privatization of administration of the Amateur Radio Service.

Specifically, the League requests that the Commission create a streamlined, privatized enforcement process for the most serious rule violations in the Amateur Radio Service. A private complaint procedure to directly initiate adjudication of malicious interference cases before the Chief Administrative Law Judge, with appropriate due process safeguards, would provide a means of maximizing the benefit of work of volunteers. It would also expedite the enforcement process, while at the same time minimizing the administrative burden on the Commission's staff in preparing and presenting enforcement cases to the Administrative Law Judges for adjudication. Finally, it would encourage compliance overall, by creating a sense of deterrence to violative behavior generally.

There is a substantial need to improve and increase the quantity and quality of enforcement of its regulations, with respect to the few instances annually of malicious interference. There is also a need to increase the speed by which the few serious instances of rule violations in the Amateur Service are addressed by the Commission. As that improvement is not likely to be forthcoming under current procedures, given the understandable limitations on Commission enforcement staff, a new procedure is called for.

There is a great deal of value and utility in the work of the many volunteers in the Amateur Auxiliary in documenting instances of serious rule violations, most notably malicious interference, and the identification of the sources of such. This resource is not being used to its greatest advantage under present Commission enforcement procedures. A private complaint procedure as a means of initiating adjudication of malicious interference would, with appropriate safeguards, provide a means of maximizing the benefit of the work of these volunteers and expediting the enforcement process. Such a procedure would reduce the burden on the Commission's Wireless Telecommunications Bureau and its Compliance and Information Bureau in preparing cases for adjudication. The increased use of volunteer resources would seem to be entirely appropriate in the Amateur Service, which involves avocational, public service and public safety uses of radio only.

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To: The Commission

**PETITION FOR RULE MAKING**

The American Radio Relay League, Incorporated, the national association of amateur radio operators in the United States, by counsel and pursuant to Section 1.401 of the Commission's Rules (47 C.F.R. §1.401) hereby respectfully requests that the Commission, at an early date, issue a Notice of Proposed Rule Making proposing to amend Part 0 and Part 1 regulations as necessary to create procedures for the further privatization of administration of the Amateur Radio Service. Specifically, the League requests that the Commission create a streamlined, privatized enforcement process for the most serious rule violations in the Amateur Radio Service. A private complaint procedure to initiate adjudication of malicious interference cases, with appropriate due process safeguards, would provide a means of maximizing the benefit of work of volunteers, and expedite the enforcement process, while at the same time minimizing the administrative burden on the Commission's staff in preparing and presenting enforcement cases to the Administrative Law Judges for adjudication. It would also encourage compliance

overall, by creating a sense of deterrence to violative behavior generally. In support of its Petition, the League states as follows:

**I. Introduction: Rule Enforcement in the Amateur Service  
Requires A Creative Review**

1. The Amateur Service is, and has for some years been, in need of some Commission assistance in a very few, persistent, serious enforcement cases. This is true notwithstanding an exemplary level of self-regulation in the Service as a whole. Though there are occasional, egregious cases of malicious interference in the Amateur Service which tend to capture the attention of large numbers of law-abiding radio amateurs and cause an outcry for Commission enforcement action, there are overall very, very few in the Amateur Service who are less than scrupulous in adherence to regulations. When one of those few instances of intentional rule violations arise, however, significant numbers of radio amateurs are unable to carry on public service or even emergency communications. In such cases, the violation is highly visible, and the Commission is routinely called upon to provide enforcement assistance. Unfortunately, due to budget limitations and a full agenda provided by Congress, little enforcement assistance in those cases from the Commission has been forthcoming. Worse, under current procedures, that degree of enforcement activity which has been provided has not been as effective in resolving specific cases as the Amateur Service would feel is necessary. The League's representatives have repeatedly met, over

the past four years, with the Compliance and Information Bureau, and with the Enforcement Division of the Wireless Telecommunications Bureau, at all levels, to discuss these problems. Before those Bureaus came into existence, the same subjects were addressed with the Field Operations Bureau and Private Radio Bureau staff. Letters from numerous members of Congress, asking for some assistance with one of the few cases that have proven impossible to resolve cooperatively, have been sent to the Commission. However, it is well-understood and appreciated by the League that the Commission's resources simply will not permit the type of enforcement actions that each individual case requires to resolve, at least on a timely basis.

2. While there is a shortage of available Commission staff time and resources for amateur radio enforcement actions, there would be no shortage of available volunteer assistance provided that the efforts of those volunteers led to a foreseeable positive outcome. In each of the malicious interference cases about which the Commission has received multiple complaints, and in numerous others, amateur volunteers have painstakingly prepared, and have submitted to the Commission tapes and transcripts, and conducted direction-finding efforts to determine the identity and location of sources of unlawful transmissions and proof of the occurrence of the violation, all of which potentially save Commission staff many hours of time doing the same thing. To date, however, those efforts have gone for very little. The work-product of these volunteers has

not been utilized to any significant degree in any proceeding, as far as the League is aware.<sup>1</sup>

3. The League believes, as the result of visits with Commission enforcement staff in both CIB and WTB on the subject, that the Commission has honestly tried to resolve the cases about which repeated complaints are received, so as to create some deterrence and encourage compliance generally. As noted herein, (*infra*, footnote 2), there have been a few enforcement actions in recent years, largely the result of persistent Congressional urging to the Commission. The burden on the CIB and WTB staff of preparing even a few of these cases, however, makes it difficult to expect that even the most serious, persistent cases will be addressed on a timely basis. As the result, any resolution of those cases is problematic. Indeed, notwithstanding best efforts of the Commission over the past several years, there has been no resolution of the four or five most serious cases brought to the Commission's attention.<sup>2</sup>

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<sup>1</sup> The Enforcement Division of the Wireless Telecommunications Bureau, which has impressed the League with its responsiveness and professional approach to serious amateur radio enforcement cases, has as its policy the requirement of independent corroboration of amateur radio volunteer-gathered evidentiary material. While the caution of the Bureau is understandable, the policy often acts as an absolute obstacle to any enforcement activity whatsoever, given the resource limitations of the Commission's Compliance and Information Bureau and the rather daunting job it has in all radio services.

<sup>2</sup> Within the past two years, the Commission has taken certain enforcement actions. All of these are very much appreciated, but none has effectively resolved the malicious interference in those areas in which they were taken. In New Orleans, for example, in a decision on reconsideration, the Commission substantially *reduced*

4. The Amateur Service is justifiably proud of its ability to maintain a generally high level of voluntary rule compliance, and to keep its bands in order with very little expenditure of Commission resources. This tradition of self-enforcement, and the overall level of compliant behavior among amateurs has not deteriorated over the years. In fact, during the past ten years, notable as a period of intense growth in the Amateur Service, it is remarkable how well the tradition of self-enforcement in the Service has been sustained. There are now more than 750,000 licensees in the Amateur Service and the number of licensees is still growing. There are fewer than ten active MI cases in the United States at the present time. No other radio service can boast that degree of compliance and self-regulation.

5. The Commission's support of the self-enforcement activities ongoing in the Amateur Radio Service is perhaps as extensive as it can be, given the budget and staff limitations, and the necessary

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previously-issued, unpaid monetary forfeitures against several amateurs, which nonetheless remain unpaid and uncollected. Also in New Orleans, in 1996, the WTB issued a suspension order to an amateur, which resulted in the surrender of that amateur's license, but which did not address the malicious interference activities of at least two other licensed amateurs in the area. Most recently, on December 24, 1996, the Chief, CIB, issued a substantial monetary Forfeiture Order (DA 96-2180) to a non-licensee found to have interfered with amateur VHF stations in Arizona. Nonetheless, the interference incidents persist there. There are two possible explanations: either the individuals continue their activity notwithstanding the issuance of forfeitures, or else there are other perpetrators of the malicious interference ("MI") in the same area, against whom no action has been taken. Nor does informal action appear sufficient: in Long Island, New York, a longstanding MI case was temporarily addressed by informal contact with the alleged perpetrator by Commission staff; however, the problem is back, worse than ever, and apparently now involves several individuals.

precedence of safety-of-life radio services in the expenditure of scarce enforcement resources. At the same time, the Commission must expect that, in any group of more than 750,000 individuals, there will inevitably, at any given time, be at least a small minority which are intentionally and repeatedly not rule compliant. In the Amateur Service, that number is indeed small. Yet, unfortunately, the damage caused by each of these few individuals is extremely visible, due to the shared-frequency characteristic of Amateur Radio, the intensive use of VHF and UHF repeaters, frequency band crowding, and the long-distance propagation of many amateur signals. The perception in the minds of large numbers, perhaps the majority, of active radio amateurs is that the Commission is no longer concerned with Amateur Radio enforcement. The irony of the situation is that only a very few, occasional, but visible enforcement actions in the more egregious cases would promote significant compliance results by means of deterrence.

6. The League firmly believes in the principle that a small series of visible, successful enforcement actions creates sufficient deterrence to sustain the Service and promote self-regulation. A corollary to that principle is that rapid enforcement action in particular cases of malicious interference keeps the matter from becoming chronic, and deters others from becoming involved. Unfortunately, the reverse is also true: the practical result of the perception of some that there will be no enforcement of the Amateur Service rules in malicious interference cases is (1) the continued presence of these problems, and (2) the absence of

any disincentive to others to violate the same rules without fear of penalty. Malicious interference problems, if left unchecked, tend to spread and increase in intensity. Two principal elements of the fine tradition of rule compliance in the Amateur Service are a respect for the Commission and its rules, and a love for the avocation. Both are obviously widespread. A third important element, however, is that sense of deterrence which is now lacking: the perception that if the rules are obviously violated, the Commission will step in and issue a collectable forfeiture, suspend a license, or revoke a license.<sup>3</sup> Some enforcement is an indispensable element of deterrence in the Amateur Service, and in this respect, over the past five years, perhaps by necessity, the Commission has less than visible in enforcement of its rules in the Amateur Service. Nor has it made the best available use of its public service-minded, rule-compliant amateur licensee volunteers in the process.

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<sup>3</sup> Commission field office staff have always maintained good working relationships with radio amateurs. Given their workloads, however, some have suggested to amateurs who complain of instances of MI that the Amateur Service must solve its own problems in each case. The purpose of this petition is to allow essentially that. The few persistent, malicious interference problems have, to date, largely evaded any efforts by amateurs to cooperatively or informally resolve them. Of course, amateurs have no enforcement authority themselves under current regulations, and normal good-faith efforts to mediate these problems at the local level will inevitably fail where there is no incentive on the part of non-compliant individuals to abide by mediated settlements of disputes: the mediators appear bootless and unhorsed. In such cases, as it stands now, the Commission must be called upon for assistance; there is no alternative.

7. By specific written agreement with the Commission, the League sponsors the Amateur Auxiliary program, which both encourages voluntary rule compliance, and provides the Commission with a means of gathering evidence in cases in which a particular rule compliance problem cannot be resolved cooperatively.<sup>4</sup> The informational component of the Amateur Auxiliary has worked very well since the inception of the program in 1983, pursuant to the Communications Amendments Act of 1982.<sup>5</sup> The Commission has not,

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<sup>4</sup> Attached hereto as Exhibit B to this Petition is a copy of the League's publication entitled "Amateur Auxiliary Training Manual". This document, at pages 27 and 28, contains the text of the current agreement between the Commission's Compliance and Information Bureau (CIB) and the League. The manual is sent to all volunteer participants in the Official Observer program that the League sponsors.

<sup>5</sup> Public Law 97-259, 96 Stat. 1087. Among many other purposes of this legislation, the Communications Amendments Act of 1982 created Section 4(f)(4)(B) of the Communications Act of 1934, which reads as follows:

(B)(i) The Commission, for purposes of monitoring violations of any provision of this Act, (and of any regulation prescribed by the Commission under this Act) relating to the Amateur Radio Service, may --

(I) recruit and train any individual licensed by the Commission to operate an amateur station; and

(II) accept and employ the voluntary and uncompensated services of such individual.

(ii) The Commission, for purposes of recruiting and training individuals under clause (i) and for purposes of screening, annotating and summarizing violation reports referred under clause (i), may accept and employ the voluntary and uncompensated services of any amateur station operator organization.

(iii) The function of individuals recruited and trained under this subparagraph shall be limited to --

however, as discussed above, used evidence gathered by participants in the program as exhibits in enforcement cases, preferring instead to rely on Commission staff investigations. The result has been the demoralization of a group of volunteers in the Amateur Service whose many, often hundreds of hours of work on individual, persistent enforcement problems has not been utilized by Commission field offices or the CIB or WTB enforcement staff in Washington. Routinely, evidence that appears sufficient to support a needed forfeiture, suspension or revocation in a malicious interference case has been allowed to grow stale: a year from the establishment of the violation, the evidence becomes useless relative to issuance of monetary forfeitures pursuant to Section 504 of the Communications Act of 1934. This is, from the League's perspective, an unfortunate waste of a valuable resource. Volunteers will not

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(I) the detection of improper Amateur Radio transmissions;

(II) the conveyance to Commission personnel of information which is essential to the enforcement of this Act (or regulations prescribed by the Commission under this Act) relating to the Amateur Radio Service; and

(III) issuing advisory notices, under the general direction of the Commission, to persons who have violated any provision of this Act (or regulations prescribed by the Commission under this Act) relating to the Amateur Radio Service.

Nothing in this clause shall be construed to grant individuals recruited and trained under this paragraph any authority to issue sanctions to violators or to take any enforcement action other than any action which the Commission may prescribe by rule.

Subsection (F) of that same statutory provision clarifies that no one acting as a volunteer in the above capacity shall be considered thereby a Federal employee for any purpose.

long support a volunteer program, if the product of the volunteer's work is not utilized. Volunteer resources are a limited commodity and must be used carefully.

8. The League is well-aware that the limits on enforcement efforts by the Commission affect all radio services administered by the Commission, and that the perceived reduction of enforcement efforts is a product of necessary resource allocation decisions on the part of the Commission. The League further appreciates the good work and cooperation of the dedicated staff that have served in the field offices. The reductions in field staff and in non-safety-of-life enforcement cases are actions that the Commission had to take, in order to meet its budget obligations. However, the League is constrained to note that the resource allocation decisions were not popular actions with Commission licensees in the Amateur Service who are plagued with persistent malicious interference. Because the Commission cannot, consistent with its obligations under the Communications Act, ignore any radio service's enforcement requirements completely, (See, e.g. 47 U.S.C. §§303, 309 and 501), it is apparent that a fresh look at the means by which Amateur enforcement matters are addressed, to see if some greater efficiencies can be obtained by better use of volunteers, is in order now.

9. The Commission's Chairman has creatively focused the Commission's attention on new means of assigning licenses in various services, and promoting new technologies. He has also promoted further deregulation of unnecessary rules, in a "red-hot

rule burning party". Those rules which remain thereafter, however, must be presumed to be necessary to the proper administration and regulation of the service and must be enforced. Accordingly, the time is right for the Commission to revisit its enforcement plan, and not continue to conduct business as usual in Amateur Radio enforcement, because "business as usual" in that Service is not working as well as it should.

**II. Current Amateur Radio Enforcement Procedures  
Do Not Capitalize On The Benefits Of Available  
Volunteer Service And Are Resource-Intensive**

10. It is understood and presupposed that the Commission's ability to address amateur MI cases is limited not only by budget factors, but as well by the fact that invocation of enforcement procedures currently available under the Communications Act, as presently administered by the Commission, necessitate in each case a significant expenditure of staff time and money. These remedies include license revocations under Section 312 of the Communications Act of 1934 (which require prior notice and an opportunity for an administrative hearing, with attendant administrative and judicial appeals procedures); license suspensions under Section 303 of the Act (which presently require prior written notice and an opportunity for a full hearing, during which time the suspension order remains ineffective); cease and desist orders under Section 312(b) of the Act (which also involve a hearing, in which the burden of proceeding and of proof is on the Commission); and monetary forfeitures under Section 504 of the Act, which are repetitively appealable administratively, and which the Commission

has no power itself to collect (and which are routinely not paid as the result). Given this available panoply of remedies, and the extent of case preparation necessary relative to each, it is apparent that the Commission's staff is hampered in its ability to gather evidence, prepare the cases, and to be prepared to proceed with hearing proceedings. If an amateur licensee is accused of MI, which is, without doubt, the most serious wrongdoing in the Amateur Service, the magnitude of the due process available to him or her is exactly equivalent to the procedures accorded to a television or cellular licensee with many millions of dollars invested in the license. The cases must be investigated and prepared with great care. The Commission's staff effort in gathering the evidence and preparing the case in Washington is the most time-consuming portion of the proceeding. It is not a particularly productive use of staff time, however, with respect to amateur radio enforcement efforts, since it is possible for the same function to be provided in the private sector by volunteers, through the Amateur Auxiliary program. The valuable time of Commission enforcement staff could be diverted to other purposes.

11. In past years, license suspensions and revocation actions in the Amateur Service were, if not prevalent, then at least not infrequent. As the result, an adequate level of deterrence existed in the Amateur Service. As the Commission's Field Operations Bureau (FOB) began to shrink during the 1980s, FOB and the Private Radio Bureau (PRB) began to focus on monetary forfeitures as an enforcement remedy. These were administratively attractive, and

appeared to be an expeditious enforcement tool, because there is no administrative hearing requirement before a Notice of Apparent Liability or Notice of Forfeiture becomes effective as an administrative matter. The Commission can quickly **assess** a forfeiture in cases where such are justified by the circumstances. The tradeoff for the ability of the Commission to assess monetary forfeitures without administrative hearing, however, is that, pursuant to Section 504 of the Communications Act, the Commission has no ability to **collect** its own forfeitures. It issues the notices of apparent liability, and if the recipient of the forfeiture order does not respond or submit payment, the matter is referred to the Attorney General of the United States for collection (47 U.S.C. §504) through a trial *de novo*. If the subject of the forfeiture chooses to avail himself or herself of the administrative appeals process after the initial forfeiture notice is issued, he or she has at least two, if not three, opportunities to appeal the issuance of the forfeiture or the amount thereof, depending on whether or not the forfeiture is issued under delegated authority. Given typical timetables at the Commission, these forfeiture proceedings routinely take more than a year to simply resolve the appropriateness of the forfeiture, and the amount, as an administrative matter.

12. Even after the ample opportunities for administrative appeal of the forfeiture, the Commission is not free at that point to refer an uncollected forfeiture to the Attorney General of the United States for collection. There are required by Federal agency

forfeiture collection procedures (See Title 5, Code of Federal Regulations) a series of "dunning letters", which add to the process a significant additional delay. Then, after all that, the matter is referred to the Attorney General for collection. These collection proceedings, notwithstanding the mandatory language of 47 U.S.C. §504, apparently involve the discretion of the offices of the United States Attorney as a practical matter. There does not appear a significant incentive for the institution of *de novo* litigation to collect unpaid forfeitures, due to the press of other business of those offices. If the forfeitures are being collected, there is no public information of that fact, and the potential deterrence value of the fact of the collection of the forfeiture is lost.

13. The Commission is forced to choose its enforcement action carefully, because, by statute, it is not permitted to utilize the fact of the assessment of forfeitures in any Commission proceeding to the prejudice of the person accused of the violation, unless and until the forfeiture is paid or finally adjudicated. There is thus a significant disincentive to pay the forfeiture if there is any likelihood of other, additional proceedings against the licensee. This disincentive is enhanced by the fact that the administrative and judicial procedures available for appealing the assessment of a forfeiture are so long and cumbersome that it is preferable to contest a forfeiture, and delay for extensive periods of time the administrative resolution of it, than it is to pay it. Worst of all, however, is the widely held belief that it is highly unlikely

that there will ever be a *de novo* civil action instituted to collect the forfeiture. The perception is that the forfeiture amounts are too small, or the circumstances not sufficiently compelling, to justify the expenditure of the resources of the United States Attorneys, to collect the forfeitures. One of two things is true about this: either the Commission does not publicize the collection of assessed forfeitures from civil collection procedures, or the Attorney General of the United States is simply not actively collecting them to start with, contrary to the mandatory provisions of 47 U.S.C. §504. Either way, there is a widespread, and growing, perception that administrative forfeitures are not collectible. This is not a belief that is confined to the Amateur Service. It is, however, a factor in the persistence of a very few, but visible, compulsive, antisocial and repeated rule violators in the Amateur Service. It is one reason why there is no deterrence to such behavior at the present time. Other remedies, such as license suspension or revocation, are clearly superior remedies in serious Amateur Radio enforcement matters.

14. What, however, are the steps taken by the Commission in a given Amateur Radio enforcement case, and how can they be streamlined in order to make the available remedies less burdensome for the Commission's staff to undertake? The Commission, currently, approaches enforcement in difficult (i.e. malicious interference) cases by the following procedure: Evidence concerning amateur licensees, when gathered and assembled by members of the League's Amateur Auxiliary program, is forwarded to the Wireless

Telecommunications Bureau (WTB) Enforcement Division, where it is reviewed. If deemed compelling, WTB asks the Compliance and Information Bureau (CIB) to gather additional evidence. Assuming for the moment that CIB's priorities and resources will permit the gathering of such additional evidence, WTB, after any necessary evaluation of the evidence, and after any necessary coordination with the General Counsel's Office (OGC), issues either a notice of apparent liability for monetary forfeiture, or otherwise a show cause order, which asks the accused for reasons why his or her amateur license should not be revoked or suspended. If the accused responds to the Show Cause Order, then the accused is entitled to a hearing before revocation or suspension. The hearings are held before an Administrative Law Judge (ALJ), who hears direct evidence, allows cross-examination in a trial-type hearing, and then issues an Initial Decision containing findings of fact and conclusions of law. An Administrative Law Judge may also assess a monetary forfeiture after hearing. If, instead of a show cause order, WTB (or CIB) issues a notice of apparent liability (NAL), the matter is handled as discussed above, without a hearing. In the case of a non-licensee, the Commission is limited administratively to the issuance of forfeitures, as there is no license to revoke or suspend.

15. The difficulty with the above procedures, from the perspective of the Amateur Service, are several: 1) any amateur enforcement action is entirely dependent on the WTB or CIB having, in their view, enough evidence on which to proceed; and this, in

turn, is dependent on the ability of CIB to gather evidence concerning amateur licensee rule violations. 2) Given the scarce enforcement resources at WTB and CIB, only the most compelling and urgent cases (assuming good and sufficient evidence) are allowed to go forward, so as to maximize deterrence. 3) Because of the scarcity of resources and the inability of WTB in a license suspension or revocation case to risk losing a case (which would carry with it the drawback of encouraging, rather than deterring, the behavior), the standard for the sufficiency of evidence is artificially high. It depends, in the view of CIB and WTB enforcement staff, on the ability to obtain evidence independent of that gathered by amateur radio operator volunteers under the Amateur Auxiliary program. 4) Finally, any additional evidence necessary must be gathered by Commission's (CIB) staff, which is already stretched to capacity. These factors, combined with the inevitable obligation to accord priority to safety-of-life radio services over public service radio services such as Amateur Radio, have served to place Amateur Radio enforcement far behind other radio services now, and for the foreseeable future. The Commission staff is called upon in each case to utilize extensive resources merely to prepare the cases for adjudication by the Administrative Law Judges.

16. Meanwhile, the Administrative Law Judges (ALJs), experts in adjudicatory matters and the evaluation of evidentiary submissions, are not being utilized to capacity by the Commission at the moment. The Commission some three years ago froze all

comparative broadcast licensing hearing proceedings, and has streamlined all comparative renewal proceedings, so the caseloads of the ALJs are significantly reduced from prior levels. This would appear to be the prevailing situation for the near term.

**III. A Private Sector Complaint Procedure Would Improve  
Enforcement and Expedite Adjudications  
While Saving Commission Resources**

17. The League, in 1982, was instrumental in the amendment of the Communications Act of 1934 to add Section 4(f)(4)(B) thereto, to permit the Commission to accept the voluntary and uncompensated services of licensed radio amateurs in improving compliance in the Amateur Service<sup>6</sup>. The idea was for these volunteers to provide information to the Commission to assist in the enforcement process, and to institute programs intended to avoid Commission intervention in the routine compliance issues that arise from time to time, including inadvertent, unintentional rule violations. Subsections 4(f)(4)(B)(ii)(I) and (II), however, provide that these volunteers may detect improper Amateur Radio transmissions, and to convey to Commission personnel information necessary to the enforcement of the Communications Act or regulations governing the Amateur Service. There is ample statutory authority in this section to allow the Commission to adopt a private sector complaint procedure, which would utilize the evidence of repeated instances of malicious

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<sup>6</sup> Id.

interference in the Amateur Service<sup>7</sup>, and evidence of the identity of the perpetrator, gathered by volunteers. The League's plan would be to rely on the members of the Amateur Auxiliary program to gather the evidentiary material and submit it to the Chief Administrative Law Judge in a complete package. The Chief ALJ, in the manner of a Federal Magistrate, would review that material, and make a threshold determination whether the material establishes a *prima facie* case against a particular individual.

18. The instant proposal would provide a means of presenting a few, serious cases of malicious interference for hearing and determination of an appropriate remedy by ALJs, without the time-consuming involvement by hardworking WTB and CIB staff.<sup>8</sup> It would create a mechanism for bringing private sector complaints directly to the Chief Administrative Law Judge, who would determine whether the evidence presented makes, on its face, a *prima facie* case,

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<sup>7</sup> It is proposed herein that the private complaint procedure would be limited to alleged violations of Section 97.101(d) of the Commission's Amateur Service Rules, which states that no amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal; and Section 333 of the Communications Act, which states that "(n)o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this Act or operated by the United States Government."

<sup>8</sup> The procedure would not exclude the Wireless Telecommunications Bureau or the Compliance and Information Bureau as parties whatsoever. Rather, just as in comparative broadcast licensing proceedings, the appropriate Bureau (WTB in the case of licensed radio amateurs accused of malicious interference, CIB in the case of non-licensees) would always be a party, to the extent to which those Bureaus choose to participate in a particular case. Nor would a private sector complaint process preclude any enforcement action by the Commission on its own motion, using current procedures.

establishing not only that there have been repeated instances of malicious interference, but also the identity of the perpetrator. If that threshold is not met, the complaint would be summarily dismissed by the Chief ALJ by returning the complaint and materials to the complainant. The accused would not be contacted in such a case, nor would he or she be subjected to any obligation at all.<sup>9</sup>

19. However, if the evidence is deemed to establish a *prima facie* case of both the event of repeated malicious interference and the identity of the perpetrator, the Chief ALJ would assign the case to an ALJ, who would issue the accused a show cause order and ask for a response in writing within 30 days. If a hearing is requested by the accused, the presiding ALJ would permit the evidence to go forward, and offer the accused an opportunity for cross-examination of witnesses and the presentation of direct evidence himself or herself, all in accordance with existing hearing procedures (47 C.F.R. §1.201 *et seq.*). As noted above, the WTB would automatically become a party to the case where the accused is a licensee of the Commission in the Amateur Service, in the event that it wishes to participate, but it would not be required to do so, as is the case now with the Mass Media Bureau in

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<sup>9</sup> As is stated in Section 1.728 of the Commission's Rules with respect to complaints against common carriers, any document purporting to be a formal complaint which does not state a cause of action under the Communications Act (or in this case, a *prima facie* case of malicious interference) would be dismissed. Any amendment or supplement to such document would be considered a new filing which must be made within the appropriate statute of limitations, and it would be evaluated on the face of the amendment or supplement alone.

broadcast hearing cases. CIB would become automatically a party in cases in which the accused is not a licensee of the Commission.

20. The most important benefit of this procedure is that it would relieve the Commission staff of its evidence-gathering burden, and the burden of preparing and adjudicating cases, and would encourage volunteer effort and self-regulation of the Amateur Service. It would expedite enforcement matters and create a sense of deterrence. The ALJs are not now overburdened, and it is anticipated that considerably fewer than a dozen properly documented cases would be presented to the Chief ALJ in a year; perhaps fewer than that would go forward for adjudication.

21. The complaint procedure could be similar to, but less complex than common carrier complaints, the procedures for which are set forth in Sections 1.711-1.735 of the Commission's rules. The hearing procedures are firmly established in the Part 1 rules presently. It is not anticipated that the complaint process would, after designation for hearing or before, involve extensive discovery by either the complainant or by the accused, since the complaint would include, as exhibits to the complaints, any and all evidence of wrongdoing by the accused, and the process and procedures by which the determination was made that there were repeated instances of malicious interference, and the means by which it was determined that the accused was indeed the perpetrator. All such information would be provided to the accused at the time of the issuance of the show cause order.

22. Inevitably, the largest concern with any private complaint process would be to carefully guard against frivolous complaints. For reasons related to ill-will between two private parties, or through a misunderstanding of the elements of a rule violation, some frivolous complaints could be expected, absent adequate procedural safeguards. Chronic rule violators could file complaints against members of the Amateur Auxiliary as a retaliatory measure, and individuals could use the threat of such filing against one another as a weapon. Fortunately, there are several principal means for avoiding abuses: The first is a requirement that, before the Commission even contacts the accused, the Chief ALJ makes a determination that the complainant has made a *prima facie* case of repeated, perhaps willful, rule violation. Second, the process would be limited to MI cases only, to prevent submission of frivolous complaints concerning miscellaneous, less urgent rule violations. Third, the League would propose that the cases be presented only by members of the Amateur Auxiliary, who are participants in an organized program which involves training of volunteers involved. Fourth, the filing of a frivolous complaint, or one that contains misrepresentations of fact, could be deemed by the Chief ALJ who reviews the material, or by the ALJ that tries the case, as an abuse of Commission processes, which could have an effect on the character qualifications of the accuser to remain a licensee of the Commission in the Amateur Service.

23. It is anticipated that the League would assist members of its Amateur Auxiliary in preparing and submitting complaints as