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23 July 1997
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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RE: Amendment of FCC Rules and Regulations/Title 47, U.S. Code to include a formal definition of the term *interference*

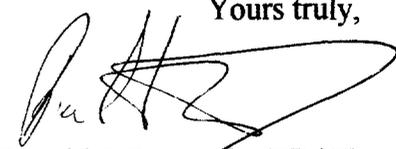
TO: The Commission

It has come to the attention of the writer, after an examination of Title 47 U.S. Code (Communications Act of 1934, as amended), that the Act does not contain a formal definition of the term *interference*. The writer believes that such a definition, if adopted, would provide an administrative solution to problems encountered with local governing entities seeking to circumvent PRB-1 and the provisions of §97.15(e) with tower ordinances which preclude, inhibit, or prevent lawful communications.

Accordingly, the enclosed proposed rule-making is included for the consideration of the Commission. An original and nine signed copies are provided for the convenience of each Commissioner.

Thank you for your time and attention to this matter. I look forward to your opinion and comments.

Yours truly,


Ronald J. Potaczala, KD4JZ

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

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In the Matter of)
)
A petition to amend §153 ("Definitions"))
of the Communications Act of 1934) RM-
(Title 47, U.S. Code) to include a)
formal definition of the term)
interference, as referred to in various)
sections of the Act and Rules and)
Regulations promulgated by the)
Commission.)

The petitioner states that he has held a Commercial Radiotelephone license issued by the Commission continuously since 1969 (initially as a First Class license, which was modified to a General Class license when commercial licensing was restructured); further, the petitioner states that he has held an Advanced Amateur Radio License continuously since 1971. The petitioner has remained active within the authorizations of both licenses, and has, from time to time, submitted comments regarding matters before the Commission.

The petitioner specifically requests that §153 of the Communications Act of 1934 (Title 47, U.S. Code), hereafter referred to as "the Act," be amended to include a formal definition of the term *interference*, in support of which the petitioner offers the following discussion:

- I. According to §303(m)(1)(E) of the Act, the Commission has the authority to sanction any licensee who "has willfully or maliciously interfered with *any other* radio communications or signals;" (emphasis added).
- II. An examination of a recent edition of U.S. Code at the local community college library (a Federal Depository facility) shows that the Act contains definitions of the words *willful* and *malicious*; yet the term *interference* is apparently not directly defined within the Act itself.

III. The petitioner offers that *interference* may be created in at least two ways:

A) By the transmission of a signal which precludes, inhibits, or prevents the communication of information between other stations, or in the case of the broadcast services, the reception of a useful signal by the intended audience. Such a transmission, if deliberate, is a violation of the Act and the Rules and Regulations of the Commission. This is understood to be the common interpretation of the term *interference*.

B) By local ordinance or covenant, the provisions of which either restrict construction of facilities in such a way as to preclude communications, or by attendant complex forms and fees which are sufficiently onerous to discourage pursuit of such a project. The Commission has addressed this matter previously in “Amateur Radio Preemption 101 FCC 2d 952 (1985),” hereafter referred to by its common title of “PRB-1”; the matter has also been addressed in §97.15(e) (Station Antenna Structures) of Part 97 of the Commission’s Rules and Regulations. The petitioner recognizes the position of the Commission that covenants entered into voluntarily are beyond the purview of its authority; however, it is the position of the petitioner that local ordinances which preclude, inhibit, or prevent lawful communications constitute as much of an interference as a deliberately transmitted radio signal.

IV. The petitioner submits that local entities, governed by legislators who propose and enact such ordinances (city, county, or any other administrative unit having the authority to make and enforce laws), and who operate Public Service Radio facilities as a city, county, etc., by license from, and under the authority of, the Commission, are *licensees* within the meaning and intent of §153(c) of the Act, which defines a “licensee” as “. . .the holder of a radio station license granted or continued in force under authority of this chapter,” and are therefore directly subject to the provisions of the Act and accompanying Rules and Regulations.

V. If such local entities and legislators are, in fact, subject to the provisions of the Act by reason of their possession of licenses for their radio communication systems, and if ordinances as proposed would in fact preclude, inhibit, or prevent lawfully licensed communications, the petitioner holds that these entities and legislators, if such ordinances are willfully pursued after it has been determined that they are deleterious to communications, are effectively in violation of §303(m)(1)(E) of the Act and subject to appropriate sanctions.

VI. It is a matter of record that every ordinance with such restrictive provisions which has been challenged in court has been overturned. However, such challenges require the services of a qualified and competent attorney, with the attendant fees. This constitutes a double financial burden to those who must challenge such an ordinance—as the challenger and as a taxpayer, thus effectively paying the bill for both sides of the case. The Amateur community, in particular, is burdened by such costs, since Amateurs by law specifically may not profit from their ventures (§97.1(a), §97.3(a)(4), and §97.113(a)(2) and (3), Part 97 Rules and Regulations).

VII. The Commission has recognized the requirements of antenna height with respect to communications efficiency by affording the Amateur community a federal tower/antenna height limit of 200 feet (subject to local FAA restrictions) without further application; yet local authorities commonly attempt to restrict Amateurs more severely.

A) As an example, a draft ordinance currently proposed by the County of Lake, State of Florida, would limit Amateur-owned antenna towers and structures to no more than 65 feet, even after being presented with information showing that Amateurs regularly use VHF and UHF frequencies with propagation characteristics similar to those frequencies utilized by local public service facilities and law enforcement agencies, especially during emergency or disaster operations such as hurricanes and tornadoes. Facilities operated by these agencies would

not be so limited. Not only is such a policy discriminatory on its face, but the very concept of effective emergency communications is also compromised.

B) This same ordinance supports elaborate landscaping and the camouflaging of tower structures, purely for aesthetic reasons (the ordinance specifically cites a “. . . tower. . . in the form and shape of a tree to be part of a forested area. . .”), in apparent conflict with §303(q) of the Act, which requires distinctive marking and lighting of tower structures if “. . .such towers constitute. . .a menace to air navigation.” Private pilots, especially in rural areas, would definitely find such concealed tower structures a hazard should engine failure or other such problems present themselves. It is common knowledge that many pilots have survived emergency landings within relatively flexible treetops; an inflexible steel tower concealed among those treetops could result in serious injury or death.

VIII. The proliferation of ordinances of this type suggests that, without a specific definition of interference by preclusion, inhibition, prevention, or discrimination, many local jurisdictions will continue to ignore—or attempt to circumvent—PRB-1 and regulations such as §97.15(e) of Part 97 unless or until they are challenged in court, apparently considering themselves not accountable to present communications law. Such an attitude on the part of the local entities suggests that this type of interference is best formally addressed at the level of the Act, since the authority of the Act encompasses all communications services and licensees.

IX. It is therefore respectfully requested that the following definition be appended to §153 (Definitions) of the Communications Act of 1934 (Title 47, U.S. Code.):

“Interference” means—

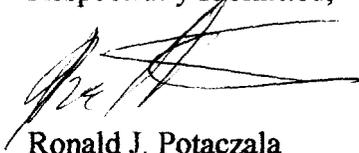
1) The transmission of a signal which precludes, inhibits, or prevents communication of information between lawfully licensed stations, or in the case

of the broadcast services, the reception of a useful signal by the intended audience; or,

2) The pursuit of a ordinance, by a local entity who is a licensee under authority of this chapter, the provisions of which effectively preclude, inhibit, discriminate against, or prevent communications by lawfully licensed individuals or organizations, after it has been determined that the ordinance as written would have such a deleterious effect on lawful communications.

X. The petitioner believes that, if the submitted definition is adopted, a legal standard will be clearly established for all licensees so that, upon proof “sufficient to satisfy the Commission” that a violation has occurred within the sense of §303(m)(1)(E) of the Act—that is, one has “. . .willfully. . .interfered with any other radio communications. . . .” in either manner defined above—administrative sanctions may be pursued against the alleged violator, be it individual or governing entity, in a timely manner without extended disruption of lawful communications and possible endangerment of public welfare.

Respectfully submitted,



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