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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, District of Columbia 20554

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In the Matter of

Amendment to 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-9150

To: The Commission

Comments In Opposition to the Petition

THE VOICE of HAM-REASON

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COMMENTS IN OPPOSITION

NOTE BENE. These "Comments in Opposition to RM9150" are filed late for reasons in the undersigned's letter to the Commission, dated 3 September 1997, (Exhibit A), an original of which was returned to the undersigned by M. J. DePont (below) of the Commission.

In his reply thereto dated Oct. 31, 1997, (Exhibit B), more than 60 days later from the said M. J. DePont, and received by the undersigned on 5 Nov. 1997, information was provided that the undersigned hereto "may file late comments to the RM- petition, and request that they be accepted as late-filed comments."

Because of the complexity of the issues presented in the petition and the extensive research needed comprehensively to address those issues in these "Comments in Opposition," more time than anticipated in the letter (Exhibit A), above to the Commission was expended; and these "Comments" are accordingly quite understandably late, for which tardiness the undersigned apologizes to the Commission.

Nevertheless, it is the purpose of the undersigned herewith to request such Commission acceptance. In accordance with the hopeful supposition granting that request, these "Comments in Opposition" to the petition identified with FCC-assigned RM9150, are herewith filed with the Commission.

SECTION I. INTRODUCTION.

1.0 Identity and Qualifications of the Undersigned herein.

a. Following comprise the identity and qualifications of the undersigned filing these "Comments in Opposition" to the above titled petition and identified by an FCC-assigned RM9150.

b. For identity: the undersigned is an attorney duly admitted to practise

before your honorable Commission for over 30 years. He is an amateur radio operator, on the air and FCC-licensed since 1921, his first license being signed by Pres. Herbert Hoover, then Sec'y of Commerce.

c. The undersigned is presently the Publisher/Editor of THE VOICE of HAM-REASON, a newsletter distributed totally free to all subscribers, containing no advertising whatsoever and devoted solely to amateur radio, etc. Its production and mailing expenses are totally borne by the undersigned who accepts no financial "gifts" or "grants" therefor.

d. For qualifications: prior to his retirement, the undersigned was a duly licensed, Professional (Electronic) Engineer: (P.E.) in both Illinois and California.

e. He is the author of nine (9) published, soft-cover, electric/electronic, tutorial manuals, some of which are still available on the market today.

f. Prior to his retirement, he was the author of close to 1-million, published words in the national, technical, electric/electronic, monthly, periodical press.

g. The undersigned is further the recipient of a U.S. Patent for his invention of a remote, radio, electronic control of drone aircraft. His patent and invention were partially employed by our Government during WW II, for which the undersigned received no pecuniary or any other remuneration whatsoever. The said patent has by now run out.

SECTION II. GENERAL OPPOSITION OVERVIEW of the ENTIRE PETITION.

2.0 Summarizing all the following "Comments in Opposition" to the above League petition will amply prove the said petition to be so basically and voluminously flawed with respect to Facts and Law, as unquestionably to sustain any Commission refusal to enact the said petition partially, or in toto. And such Commission refusal to enact the petition is herewith respectfully requested.

2.1 The American Radio Relay League, (hereinafter termed the "League" or "ARRL") petition is indeed a very strange document. Containing approximately 7500 words, one is struck that perhaps the petition confirms the famous words of Shakespeare in Hamlet III, ii 242, paraphrased to

"the League doth protest too much...!"

a. The 7500-word petition is replete with totally unnecessary minutae such as the evidenciary material in intimate detail which the League Amateur Auxiliaries (hereinafter termed, "AAs"), would gather, assemble and produce before the Administrative Law Judges, (hereinafter termed, "ALJ"), as "prosecutors" of amateur radio operators' illegal, malicious interference, hereinafter termed, "Ham MI". (Pet. p.23, para.23).

b. The petition goes into intimate details denouncing the Commission handling proceedings of Ham MI cases; advising how and why the League substitute program for handling the said Ham MI cases is better by employing League AAs, etc., in lieu of Commission personnel.

c. Almost "guaranteed" in the League petition is that under the proposed, League plan, Ham MI perpetrators would be speedily apprehended, adjudicated and punished vice the allegedly slow time, to even occasionally not doing anything at all in presently alleged, Commission proceedings. Obviously,

such a "guarantee" is absolute hyperbole or sophistry, and hence unbelievable.

d. Thus, it comes as a complete surprise when one finds on petition page 26 in para. 26, subpara. C, that the

"... hearing proceeding (would be) commenced in accordance with Commission procedures..."

e. That, after hundreds of words denouncing "normal Commission procedures," as being inadequate in the speedy apprehension, adjudication and punishment of Ham Mi perpetrators. So, it seems that after all the petition verbiage, the League finds itself back to "Square One!"

2.2 In arguments favoring its petition, the League has in its official, monthly periodical, "QST", 'way overblown its reasons for enactment of its petition; and has engaged in continual hyperbolizing the entire matter.

2.3 Stripped of all hyperbole (Example: calling the Amateur Radio Service a "public radio service" instead of what it really is: a Great Hobby. (Pet. p.17, para.15) and parenthetical verbiage (Example: the philosophical discussion of punishment as a deterrent to others tempted to commit the same crime, etc. (Pet. p.7, para.6), the League petition proposes regarding complaints involving malicious interference by amateur radio operators, hereinafter termed, "Ham MI," to substitute its plan for <47 USCA 154(f)(4)(B)(ii)(II)> which authorizes amateur radio station operators detecting

"improper amateur transmissions to - (II) the conveyance to...Commission personnel of information which is essential to the enforcement of this chapter..."

2.4 The League plan, as detailed in the petition, would have its AAs assemble and produce the required evidence before an ALJ, by-passing the Commission, supra, completely. (Pet. p.19, para.17; Id.p.26, para.26; Id, Appendix p.i, para.1.; Id. Appendix p.i, para.1.96).

2.5 However, there is a singular flaw in the League's petition plan, based as the petition states unequivocally on that

"Administrative Law Judges (ALJs) experts in adjudicatory matters and the evaluation of evidentiary submissions." (Emphasis supplied.) (Pet.p.17 para.16).

equates with "electronic engineering" expertise. Because the broad statement, supra, seems to indicate that in the case of Ham MI, the ALJ is an "expert" in the obvious, electronic engineering evidence being submitted by the AAs.

a. Unless the ALJ is an EE in electronics, there is no evidence either in Law or in the League petition beyond the inference that ALJs are, perhaps, EEs or have the equivalent background, formal education or expertise in that discipline.

b. The ALJs are normally required to judge solely based on the evidence produced before them.

(1). If nobody appearing before the ALJ seems concerned whether the AAs are indeed qualified electronic engineers, or have the equivalent of

training in that discipline, it is not the job of the ALJs to question or to investigate.

(2). But the ALJ's judgement and decision suffers accordingly; and probably not to the benefit of the accused Ham MI perpetrator.

c. If indeed the ALJs lack the necessary electronic/electrical and astrophysical background or expertise to evaluate correctly such evidence, how can they adjudicate that what the AAs present before them, is indeed a prima facie, Ham MI case?

d. Obviously, they can't. Which is a flaw in the petition.

2.6 Failure by the League to assume Ham MI perpetrators to be innocent until proven guilty, is also a serious, petition flaw.

a. The petition by-passes 47 USC 401, 47 USC 150(j), 47 USC 409 and 47 USC 503(b)(2)(D), some of which were carefully crafted either to infer or provide that the Commission's proceedings

"will conduce...to the ends of justice..."

b. For nowhere in the League, petition-proposal substitute for the Commission proceedings in the apprehension, adjudication and punishment of Ham MI perpetrators, is the law, <47 USC 154(j)>, applied to its AAs: that all League and/or AA proceedings should, like those of the Commission "conduce... to the ends of justice..."

c. The League and its AAs obviously and totally assume Ham MI perpetrators to be guilty until the League AAs, acting as "prosecutors", complainants and witnesses can get an ALJ to agree with that assumption.

d. The line of demarcation between the age-old, legal mandate that prosecutors must assume alleged perpetrators to be innocent until proven guilty, and the professional attitude of these same prosecutors when in court in their efforts to prove the said perpetrators guilty, is exceedingly fine, but it is there, nevertheless.

e. The Commission need not go further than the petition itself for verification of the above statement. The League requests the enactment of its petition mostly to assuage the pique and disappointment its AAs claim to suffer when the Commission does not "instanter" proceed to apprehend, adjudicate and punish Ham MI perpetrators.

f. So obviously, the AAs, who according to the the League petition are the "prosecutors", complainants as well as witnesses, consider and assume the Ham MI perpetrators guilty in contravention to the above, axiomatic mandate. Which is another serious flaw in the petition.

2.7 A miniscule, criminal occurrence and a concurrent Theory comprise the two main, League reasons for requesting enactment of its petition.

a. Concerning the miniscule, criminal occurrence according to the petition, Ham MI illegal as it is, occurs "less than a dozen times a year" (Pet. p.5, para.4; Id. p.21, para.20). That is too small an occurrence to warrant by-pasing the carefully crafted, Commission, safeguard for all of its proceedings to

"conduce... to the ends of justice..." <47 USC 154(j)>, merely to assuage the pique and/or disappointment of such a tiny number of amateur radio operators when compared with today's, 750,000 total number, who are not thus involved.

b. Regarding the concurrent Theory above (Id. 2.7 supra), the League petition asserts that publicizing a quick apprehension, adjudication and

punishment of these twelve (12), criminal Ham MI perpetrators would act as a deterrent to further such illegal perpetrations, as well as other illegal acts in the Amateur Radio Service.

c. Any statement that publicizing a quick apprehension, adjudication and crime perpetrator's punishment would become a deterrent to others who might be tempted to commit the same or other crimes a futuro, is and has been a highly controversial Theory for many years. There is no generally accepted, final agreement. There are just as many reliable sources insisting there is no such deterrent power, as there are those who gainsay that opinion.

d. Accordingly, the Commission should not be encouraged to accept the League's opinion in this controversy; and the petition fails with regard to that League reason.

2.8 In addition to the fact, taken from the petition itself, that no more than 12 miscreant, Ham MI, amateur radio operators per year are involved, which is a tiny 16/10,000ths of 1% of the nearly three-quarters of a million (750,000) licensed, amateur radio operators in our nation, there is already provision in 47 USC 503(b)(3)(A) in accordance with Section 555 of title 5, for a hearing directly before an ALJ when a forfeiture penalty is involved. Both of the above cause the petition to be unnecessary.

2.9 The League petition "rides rough-shod" over the many, carefully crafted, Commission Rules for its proceedings so as not only to conduct them to "conduce... to the ends of Justice.." <47 USC 154(j) et seq., but also

"In determining the amount of such penalty (forfeiture), the Commission or its designate shall take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matter as justice may require." <47 USC 503(b)(2)(D)>.

a. The said petition would have an ALJ, suspend the license of the violator, when such extreme penalty is reserved solely to the Commission alone by 47 UCS 303(m)(1) for malicious interference under 47 USC 303 (m)(1)(E).

b. The said petition would change the burden of proof of Ham MI from the Commission by 47 USC 312(d) to its AAs, making their "prosecuting job" that much more difficult.

2.10 Nor are the above paragraphs the sole instances wherein the League petition falters.

a. The petition Appendix, page (i), paragraph (j)>, following the Law in cases in which amateur radio operators are qualified to monitor Ham MI, states:

"(j) The Chief Administrative Law Judge shall have authority to receive complaints from licensed amateur radio operators..." (Emphasis furnished).

and the petition further states on the same page in paragraph Id. 1.96(a) that

"1.96(a) Specific amateur licensees, pursuant to an agreement with the Commission's...as participants

in the Amateur Auxiliary program..." (Emphasis furnished).

without ever in any way indicating, describing, mentioning or disclosing that the said "amateur radio licensees" by the same petition must be League members in order to participate in the AA program.

b. Which is contrary to 47 USC 154 et seq., as well as the Agreement, itself (Exhibit C), supra.

c. Nor is there disclosure that it would cost a non-League member \$34.00 annually (as of 1997) to join the League so as to be able to participate in its AA program.

d. Both these "oversights" cause the entire petition to be suspect, or at most perhaps to be an attempt by the League to increase its membership via the AA program.

e. Either reason should be sufficient for the Commission to deny the petition "out of hand!"

2.11 The law is concise on the following point. In <47 USC 154(f)(4)(B)(i)(1)> it states the Commission may -

"... recruit and train any individual licensed by the Commission to operate an amateur station..."

for the purpose of employing him/her to detect improper, amateur radio station operation. In the furtherance of this, <47 USC 154(f)(4)(B)(ii)> states the Commission may for -

"... purposes of recruiting and training individuals under clause (i)...may accept the voluntary and uncompensated services of any amateur operator organization.."

a. However, the League is not "uncompensated." It requires payment of \$34.00 annually (as of 1997) from AA applicants as and for League membership dues (Exhibit E). unless said applicant is already a League member. As proof of this, see letter from the League, Exhibit D.

b. Additionally, since only League members can become AAs, this is a violation of <47 USC 154(f)(4)(B)(ii)> supra, which provides for "any individual licensed by the Commission to operate an amateur radio station."

That is certainly not "a member of the League duly licensed by the Commission, etc."

c. It is also a violation of the Agreement between the League and the FCC, (Exhibit C) supra, that -

"5. The ARRL (League) agrees to provide voluntary and uncompensated services to the FCC as follows:
(a) to recruit and train amateur radio operators to monitor Amateur Radio Service frequencies as volunteers and without compensation."

d. The League violation of the said Agreement has three (3) parts.

(1). On information and belief, the failure of the League to disclose at the time of signing the said Agreement, that it would recruit and train only its members, and not

"any individual licensed by the Commission...";

(2). The League failed to disclose that it charges \$34.00 (today) membership dues as a prerequisite for any prospective, non-League

member to join the AAs; and

(3). That it knew at time of signing the Agreement, but failed to disclose that some of its AAs were legal minors, children and/or juveniles, incapable of being witnesss of alleged Ham MI without several legal prerequisites including permission from the AAs' parents, legal guardians or Guardians-ad-Litem appointed by the court or ALJ, etc., for the minor/child juvenile AAs to testify or to "prosecute" per the League petition.

2.12 Thus, even if the following, detailed flaws in the petition are not considered sufficiently severe to be fatal to the petition's enactment, the above flaws and the League proposed, substitute program is pure sophistry; and shows little regard by League, its AAs and/or the ALJs for electronic and environmental happenstances which permeate interfering, radio signals, as well as the lack of true knowledge or formal, electronic background and/or education of the ALJs.

a. The above lack on the part of the ALJ, plus the lack of comprehensive expertise of the testifying and "prosecuting" AAs in concurrent disciplines of electronic engineering and astrophysics of radio signal propagation would certainly affect the ALJs as believable arbiters and judges of what is and what is not truly and solely a genuine case of Ham MI.

b. For that reason alone, which is a devastating flaw in the petition, the Commisson should deny its enacment.

2.14 Finally, and only as an aside which casts light on the pique, frustration and disappointment of the AAs which is an alleged, super-important reason for the petitioned, League, substitute program, it is suggested that one can ask any, local policeman if he is satisfied with the speed with which the courts and lawyers act on his reported evidence of crime. You'll get the same, disgruntled story of pique, frustration and disappointment as the AAs suffer in the similar situations.

a. Nor is all this anything new. Surprisingly, it dates back to the B.C era, some 2,400 years ago. Witness paraphrasing Eripides (485-406BC) in The Bacchae, l 877:

"Slow but sure moves the might of the Gods (Commission)".

In his day also, apparently there was pique, frustration and diappointment with the turtle-slowness of apprehension and punishment of violators.

SECTION III. OPPOSITION SPECIFICALLY to the AAs' EXPANDED FUNCTIONS.

3.0 Follows now details regarding some of the major flaws in the League petition specifically concerning the proposed employment of League AAs in lieu of the present, highly qualified, Commission personnel in the handling of Ham MI cases.

3.1 The League petition envisages its AAs performing as "prosecutor/witnesses" in lieu of the Commission personnel in the apprehension, adjudication and possible punishment of Ham MI perpetrators.

a. Cursory investigation of the background of its AAs will reveal that the League made no effort to discover or disclose their respective, chronological ages.

a. Nor does the League's written Agreement with the Commission, dated 24

Feb. 1994, (Exhibit C), apparently include this information or disclose it.

b. Nor does it appear on the AA application form (Exhibit F) which every prospective AA must execute before proceeding to possible acceptance as an AA by the League.

c. Nor does it appear in the accompanying, explanatory, AA brochure (Exhibit G).

3.2 In conversation on or about 29 July 1997 with Mr. Jay Mabey, Senior Ass't. Mgr. of the League Field Service Dept, and titular head of League AAs, the undersigned called Mr. Maybey's attention to the lack of information concerning the AA ages.

a. Mr. Maybey acknowledged that indeed there could be AAs whose age could be anything from 5 or 6 to 90+ years and older; and that neither he nor the League knew which AA was of what age.

b. As a result, he acknowledged that it might be possible for an AA to be involved in a Ham MI case who legally might be an infant, minor or juvenile between 5 and 18 years of age.

c. Such infants, minors and/or juveniles under 18 years of age are legally incapable of being "prosecutors" in court cases including as appearing as such before ALJs, etc.

d. Additionally, the Rights of legal infants, minors and/or juveniles are normally, carefully safeguarded by court appointed Guardians-ad-Litem for the minors' protection.

e. So that minor-aged AAs are subject to such Guardians' appointment and orders, as well as the orders of the AAs' parents, if these exist and are active.

f. All of the above muddies the League proposed substitution of AAs for the Commission personnel in Ham MI cases, as outlined in the League petition, to where the petition must either be extensively amended to address the said situation, or its enactment should be denied.

g. On information and belief, the League has not requested a petition amendment.

h. Nor has it taken any steps to ameliorate the situation, internally within the League, itself.

3.3 The petition forces extensive legal duties on the AAs who are to present the Ham MI cases before the ALJ, (Pet. p.22; para.22; Id. p.23, para.23; Id. p.26, para.26B), in a trial-like environment of the hearing in which they are inexperienced.

a. There is no provision for a "prosecuting attorney" to present the Ham MI cases on behalf of the League AAs, who are really only witnesses.

3.4 The League petition calls for the AAs to furnish the ALJ with "Findings of Fact" and "Conclusions of Law" after the "trial" of an alleged, Ham MI perpetrator; and provides for "assistance from the League" in this matter (Pet. p.24, para.24).

a. However, from the wording of the petition, it is clear that the League is not assuming the major brunt of providing those proposed "Findings of Fact" and/or "Conclusions of Law." They are left in limbo, presumably to become a major job for the AAs involved.

b. It is unknown by what yardstick the League believes that its AAs are knowledgeable in the Law sufficiently to be able comprehensively to produce

the said "Findings of Fact" or "Conclusions of Law" even with "assistance from the League" (Id. p.24, para.24).

c. Certainly, it can be hypothesized that any AA could be legally experienced, as well as that one would not be thus gifted.

d. In any event, leaving the matter open, is a flaw in the petition; and becomes another valid reason for its denial by the Commission.

3.5 In line with the League petition, it might be necessary for AAs to be present in Washington, D.C. the sole place where such ALJs preside, and before whom the AAs might have to appear in person.

a. The AAs might also have to be available for personal cross-examination by the alleged Ham MI perpetrators, (Pet. p.24, para.24), or their attorneys if so ordered.

b. No provision appears in the League petition for reimbursement of travel and living expenses incurred to and in Washington, D.C. by the AAs or their parents or Guardian(s) if the AAs are minors while engaged as detailed above. Or for that matter, even if the AAs are adults.

3.6 There is no provision in the League petition for "Time Lost" from either their schooling if the AAs are minors, or from their business or profession, if the AAs are thus, vocationally engaged.

a. Such "Time Lost" could be sufficiently serious to the AA involved, that if a minor his/her parents or guardian might object to the appearance in Washington, D.C. And if an AA vocationally engaged, that AA and/or his/her superior in business or profession, might object to the AA's appearance in that city as well.

3.7 Nowhere in the petition, is either of the above possible problems (Id. 3.5 & 3.6, supra) addressed or resolved.

a. Without a solution, should the problem arise, the petition makes no provision for an "emergency, substitute solution," leaving the entire matter in limbo.

b. Failure to address the problem at all, is a fatal flaw in the petition and should encourage its denial by the Commission.

3.8 In the normal Commission proceedings being substituted in the League petition, the Commission would ordinarily subpoena the AAs with their records. Then the Government would financially defray or provide otherwise for travel and living expenses for the duration of the AAs involvement before the ALJs, etc. in Washington, D.C.

a. Which would include the minor AAs' parents;

3.9. Furthermore, the Government would apply for appointment of Guardians-ad-Litem, if necessary; and

a. Provide attorneys to protect and advise the AAs in their appearance solely as witnesses before the ALJs or the Commission, etc.

3.10 To repeat Id.3.5a supra, the petition advises that the AAs would make themselves available for cross-examination by the Ham MI perpetrators and/or the alleged perpetrators' attorneys, if required to do so.

a. Under such cross-examination, a witness is entitled to have an attorney present to protect his/her Rights while being so questioned.

b. The League petition provides no such attorney for the protection of its AAs under cross-examination, which is a serious denial of the AA Rights.

c. It is therefore a flaw going to the core of the League petition.

d. Any substitute Commission proceedings which leave the AAs as "naked" witnesses under cross-examination, and fail to comply with 47 USC 154(j) et seq. that the (Commission) proceedings must

"... conduce... to the ends of justice...", should be cause enough to reject the petition in toto. And the undersigned respectfully requests the Commission to so decide.

SECTION IV. OPPOSITION SPECIFICALLY to the LEAGUE'S 'ORGANIZED TRAINING PROGRAM.'

4.0 Follow now somewhat detailed "Comments in Opposition" to the League non-specific "organized program training of volunteers involved", as stated in the petition on page 22, in paragraph 22.

4.1 That "organized program training of volunteers" turns out to be no "organized training program at all, but merely the prospective AAs' study of an "Amateur Auxiliary Training Manual", described and detailed as follows.

a. The above said "Training Manual" in Chapter 4, states (Exhibit I):

"4.2 To be appointed as an OO, the candidate (must) successfully complete this FCC-approved training program..."

b. League AAs are part of the OO (Official Obsever) group.

c. There is not a shred of evidence of the above, alleged "FCC-approved traning program," other the following which is taken from the Agreement between the League (ARRL) and the FCC, (Exhibit C), that -

"The FOB (now the CIB) agrees to do the following:

d. To assist the ARRL in training volunteers..."

d. There is no evidence of when or in what manner the FOB, now the FCC CIB, does or did in fact "assist the ARRL in training volunteers," and the statement (Id.4.1a, supra) becomes highly suspect as being more of the League hyperbolizing "facts."

e. With a lack of such evidence, it is entirely fair to suppose that the said assistance was never asked for nor required. Or for that matter, questioned.

f. So the Commission apparently never actually knew of what the alleged League "organized program of training" consisted, other than, perhaps, that a League "Training Manual" existed.

g. That manual obviously was "no organized training program" except as hyperbolized by the League.

4.2. The abcve, Id.4.1, in the opinion of the undersigned as a formerly licensed (in two states), electronic engineer (P.E.) is no real "training program," at all, but a "study course" plus an open-book examination on what had been read and presumably, studied.

a. And for the record, open-book examinations are proverbially easy to pass.

b. Obviously, if merely studying a manual, plus an open-book examination on what's been read equates with being able to "evaluate" electronic

engineering data and/or radio signal propagation as the League AAs are supposed to be able to do in determining the cause for what appears to be Ham MI, then anyone could become a Lawyer, Doctor, Architect or any professional merely by studying the proper "Training Manual," and passing an open-book examination thereon.

c. Equally obvious, all of the above are impossible.

4.3 Which brings up the question of just how effective can the alleged, League's "organized training program" possibly be.

a. Taken as a whole, the League's alleged training program for its AAs is multi-confused between the petition, the Law and the Agreement between the League and the Commission.

b. In the petition, page 22, paragraph 22, it is stated that,
 "...members of the Amateur Auxiliary who are participants in an organized program which involves training of volunteers involved..." (Emphasis furnished).

c. In the applicable FCC Rule, now Law, 47 USCA 154 et seq. supra, the Commission is charged with subjecting the amateur radio operators involved to training in

"..screening, annotating and summarizing reports... of such (Ham MI) violations.

d. And since Commission personnel includes electronic engineers, it can be supposed with some degree of certainty that the Commission would employ such experienced personnel for the above training purposes.

4.4 The League's "organized program... of training" doesn't even comply with a dictionary's definition of the term, "training,":

"to make proficient with specialized instruction and practise.." (The American Heritage Dictionary of the English Language). New College Edition.); (with supplied emphasis.)

4.5 The League's "organized program...of training" is completely devoid of the essential "practise."

a. It consists only of study of a 30-page, soft-cover booklet, titled, "Amateur Auxiliary Training Manual," which, on information and belief, is simply the former, "Training Guide The Amateur Auxiliary To The FCC's Field Operations Bureau," (FOB), copyrighted in 1993; but reprinted with the inclusion of the February 24, 1994 "Agreement between the FCC and the League" (Exhibit C), anent the AAs becoming a "part" of the FCC's FOB, plus the new title (supra).

4.6 As a former (before his retirement) licensed, (in two states) electronic engineer (P.E.), the undersigned can attest that the final determination of a cause for two or more radio signals apparently interfering with each other, is a highly complex electronic and astrophysical situation and condition, not easily resolved even with extensive and sometimes very expensive, specialized instrumentation and equipment, as well as considerable personal, technical, electronic engineering plus some astrophysical expertise in the disciplines involved.

4.7 The alleged, League "organized (training) program" which consists of only studying the above mentioned 30-page, soft-cover, booklet and an open-book examination thereon, is supposed to be the quid pro quo for determining that an interfering, radio signal is a genuine, Ham MI.

a. To that end, there is a short "Chapter 3" titled, "Technical Standards" (Exhibit H) in the said manual, Id. 4.5a. supra, which attempts to provide the involved AA with some electronic and astrophysical information on radio signal propagation.

b. Even there the paucity of information is obvious. That Chapter is the shortest in the booklet, failing to take up a whole, printed page, even though it suggests additional extensive, AA study of several, indicated chapters in the League (ARRL) 1994 Handbook.

c. However, the said chapters do not appear in the 1997 ARRL Handbook.

d. But there is a chapter on Electromagnetic Interference (EMI) and another on Radio Signal Propagation, both of which might be somewhat germane, however only indirectly, to the issues presented.

4.8 As any EE would testify, any decision that an interfering, radio signal is a genuine Ham MI would have to be based on extensive research and investigation of no less than at least 10 or more differing, separate and distinct causes, none of which would be the fault of the operator of the said interfering, radio signal.

a. And detailing them in an instruction booklet would certainly take up far more than the 3/4-page presently assigned to the subject in the present League training manual.

b. Nor are the said apparent, Ham MI causes listed or discussed at any great length in the 1997 ARRL Handbook (supra).

4.9 Again, speaking as a formerly licensed, electronic engineer (P.E.), to by-pass the many causes for interfering radio signals, is a sign of lack of either proper engineering background, formal engineering education, self-acquired expertise in the required disciplines, even proper available and usable (with intelligence) specialized instrumentation expertise, or all of the above.

4.10 A recorded tape such as the AAs propose to be able to produce as evidence of Ham MI, can be evidence of two or more interfering, radio signals with each other.

a. But the tape plus even a curt, expressed, voiced refusal by the operator of an interfering, radio signal to desist and quit, might still not be willful and malicious, but simply an affirmation of one or more of the many electronic, environmental physics and astrophysics happenstances beyond the control of the interfering, amateur radio operator's signal.

4.11 Which is one of several reasons why on such complaints, the Commission would probably and normally have assigned a professional, electronic engineer, possibly an EE graduate to evaluate the evidence before its presentation before ALJs etc.

a. The Commission's program in this regard does not depend on the electronic/physics background and/or formal, engineering education of the ALJs or even the AAs, with regard to the complexities of radio signal propagation, the real fundamental problem involved here.

b. The League petition completely by-passes the evaluation of the evidence produced by the AAs, which evaluation was probably performed by Commission, engineering or scientific personnel, supra.

c. And which undoubtedly was at least one reason for a possible delay in "going forward" with an alleged, Ham MI case; and an alleged cause for the ultimate filing of the League petition.

SECTION V. CONCLUSION.

5.0 The main, bottom-line reason for the petition is stated by the League, that-

a. Essentially, and stripped of all hyperbole and excessive verbiage, the petition attempts to reduce the Commission proceedings anent apprehension, adjudication and punishment of alleged Ham MI perpetrators to a cosmetic device simply to assuage twelve (12) disgruntled, piqued, disappointed and "hurt" amateur radio operators because of the alleged poor, late or even non-response to their reports of Ham MI to the Commission.

5.1 The petition is further based almost entirely on that in the opinion of the League, that the Commission must take quick action in regard to Ham MIs.

a. In the furtherance of that opinion, the petition deprives the Commission of all its independent action in such cases, including the Commission's evaluation of the evidence as well as the Commission's compliance with 47 USCA 154(j) that all all its procedures must-
"...conduce...to the ends of justice..."

5.2 Both as an attorney and as a formerly, licensed (in two states), electronic engineer (P.E.), the undersigned feels that the petition is poorly contrived, offers no real panacea to the delays encountered where justice must prevail, and that it is beholden to those involved not to overlook that last, above, prime, important consideration.

5.3 The petition is replete with countless flaws in both Fact and Law.

a. It is a prime example of hyperbole in an effort to "make its contents attractive" for the Commission to relinquish its most important function - to control radio emissions fairly with justice for all involved - to a group of nondescript, amateur radio operators, some of whom want to be "kilocycle cops" merely as a personal Ego Trip, with no real regard for any kind of justice, whatsoever.

5.4 The petition holds out what seems to be a panacea for the Commission allegedly being overwhelmed by its normal, administrative functions, including policing the air waves.

- a. But the alleged panacea, turns out to be pure sophistry; and
- b. Being so heavily flawed, becomes one of no panacea at all.

5.5 The petition's main panacea and "means for improving policing the ham bands," resides in the League AAs, who are inexperienced in the complexities of electronic engineering and astrophysics of radio signal propagation to be able to determine what is and what is not a true case of Ham MI.

a. Unless the interfering ham makes it plain that, having been "caught" by an AA, he confesses that indeed and unfortunately, he is the alleged Ham MI, something which is not even discussed in the petition.

5.6 The petition would allot the ALJs the power to suspend or even remove the amateur radio license of "convicted" Ham MI perpetrators, when the evidence submitted before them is that at best of inexpert AA witnesses.

a. Furthertrmore, a request to endow the ALJs with authority to suspend or remove Commission, granted amateur radio license, requires a Congressional Act to that effect, and cannot be provided by a Commission Rule or enactment.

b. There is no way the Commission can divest itself of its sole authority to suspend or remove an amateur radio license previously granted by it. It does not possess that authority.

5.7 Even if there is not agreementf by the Commission with what has been stated above in these "Comments in Oposition, the petition fails totally to delineate how, where, when and by whom the alleged evidence of the alleged Ham MI is to be evaluated.

a. If the League was going to perform such evaluation, the petition fails to mention it.

b. If the AAs were to perform such evaluation, the petition fails to mention it.

c. There is inference in Section 2.5 supra that the ALJs are supposed to have sufficient knowledge of electronic engineering and astrophysics of radio signal propagation to determine that an interfering radio asignal is a genuine Ham MI, sufficient to decide from the evidence the AAs produce before the ALJ is a "prima facie", Ham MI case.

(1). But calm reflection in the matter causes one to question seriously whether the ALJs' electronic engineering and/or radio signal propagation knowledge is actually sufficient to make such a judgement and decision.

5.8 But most important of all is the complete failure anywhere in the petition that the League AAs, acting in lieu of the Commission personnel in the matter of Ham MI cases, would handle their's and the League's proceedings, as must the Commission in all its proceeding, per 47 USAV 154(j), et seq.

"to conduce... to the ends of justice..."

a. And if neither the League nor its AAs feel constrained to proceed so as

"to conduce... to the ends of justice...",
the petition is today hardly worth the paper fon which it it printed, much less a Commission enactment!

b. For such an oversight or deliberate failure goes to the very thrust and absolute core of the petition, making it totally worthless by today's accepted ethical, legal and court standards.

5.9 For the above reasons and the many flaws both legal and factual in the petition as detailed herein, the undersigned respectfully requests the Commission to deny the League petition.

Respectfully submitted,
THE VOICE of HAM-REASON,
BY:



Karl A. Kopetzy,
Attorney-at-Law,
Publisher/Editor,

3619 North Lamon Avenue,
Chicago, Illinois 60641-3552
(773) 202-9564

10 December 1997

cc Christopher D. Imlay, Esq.,
General Counsel,
The American Radio Relay League, Inc.,

BOOTH, FRERET, IMLAY & TEPPER, P.C.,
1233 - 20th Street, N.W.,
Washington, D.C. 20036

THE VOICE of HAM-REASON

THE VOICE of HAM-REASON is devoted entirely to the preservation of the Amateur Radio Operation as an ongoing, continuous, viable Hobby.

3619 N. Lamon Ave., Chicago, IL 60641

Tel.: 1-312-202-9564
773

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SEP 4 1997

VIA EXPRESS MAIL

FEDERAL COMMUNICATIONS COMMISSION,
1919 M Street, N.W.,
Washington, District of Columbia 20554
Attention of the Commission Secretary.

3 Sept 1997
FCC MAIL ROOM



References: Petition, RM-9150; and
A request for extension of time to file Comments.

Dear Sirs:

Introduction

I am an attorney duly admitted to practise before your honorable Commission for over 30 years. I am also an FCC-licensed amateur radio operator since 1921 (my first license was signed by Herbert Hoover, then Sec'y of Commerce); and I am the publisher/editor of the above totally free to all subscribers and with no advertising whatsoever, newsletter devoted to amateur radio, etc.

Although I had been following the petition of THE AMERICAN RADIO RELAY LEAGUE, (hereinafter called the "League"), now FCC-identified as RM-9150 from its initiation, I failed to find notice until yesterday (2 Sept.) that Comments were due to be filed by 31 August 1997.

I had wished, and still want to present what I deem to be excellent evidence that the FCC should deny the petition for many reasons. Among these are that while the petition states a complete program how the an alleged Malicious (amateur radio operator) Interference (MI) case before an Administrative Law Judge (ALJ) would be handled by League Amateur Auxiliaries in place of Commission personnel etc., the following (which are only part of the Comments I wish to file) should be noted.

Part of My Comments in Opposition

(a). The petition by-passes 47 USC 401, 47 USC 150(j), 47 USC 409 and 47 USC 503(b)(2)(D), some of which were carefully crafted either to infer or provide that the Commission's proceedings... "will conduce... to the ends of justice." Some of the Sections also provide for hearings in other than Washington, the city on which the petition insists, since that is where the ALJ is located; and which would undoubtedly make any hearing attendance, when necessary, highly expensive for both the accused and the League Auxiliary personnel performing as the "prosecutors." I intend to identify other locations, already provided in Part 97, better suited for any such hearings.

(b). The petition forces extensive legal duties on the Auxiliaries who are to present the MI cases before the ALJ, in a trial-like environment of the hearing

FEDERAL COMMUNICATIONS COMMISSION,
Page 2 -- September 3, 1997.

in which they are inexperienced. There is no provision for a "prosecuting attorney" to present the MI cases on behalf of the League Auxiliaries who are really only witnesses.

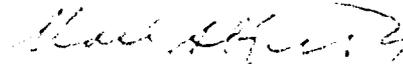
(c). In addition to the fact, taken from the petition itself, that no more than 12 miscreant, MI, amateur radio operators per year are involved, which is a tiny *16/10,000ths of 1% of the nearly three-quarters of a million (750,000)* licensed, amateur radio operators in our nation, there is already provision in 47 USC 503(3)(A) in accordance with Section 555 of title 5, for a hearing before an Administrative Law Judge. Both of the above cause the petition to be unnecessary.

My Request.

Because unfortunately I missed the final "Comments" date (31 Aug. 1997), I respectfully request an extension of at least two weeks time from my receipt of your consent (if given) to this my request, in order for me to present considerably detailed, comprehensive Comments in opposition to an FCC's enactment of the petition above identified, which will include pertinent citations of Law as well as extensive, pertinent statements of facts not mentioned or detailed in the petition as filed.

May I thank you in advance for whatever courtesies are extended me.

Very truly yours,



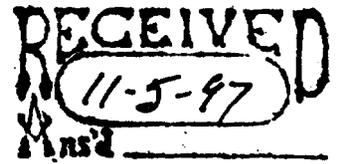
Karl A. Kopetzky, LL.B., K9AQJ,
Publisher / Editor

cc - Christopher D. Imlay, Esq.,
BOOTH FRERET IMLAY & TEPPER, P.C.,
Attorneys for THE AMERICAN RADIO RELAY LEAGUE, Inc.,
the petitioner herein.

EXHIBIT B

10-31-97

Karl Kopetzky
3619 N. Lamon Ave.
Chicago, Illinois 60641



Dear Sir:

This refers to your letter of Sept, 3, 1997. You ask for an extension of time to file comments to RM-9150. The comment period closed on 9-2-97. Your letter was received on 9-4-97.

If you wish, you may file late comments to the RM-petition, and request that they be accepted as late-filed comments. Such request should be filed with the Secretary, FCC. The RM~~#~~ should be ~~referred~~ ^{referred} to.

The petition for rulemaking (RM-9150) is under consideration. If it is decided to issue a Notice of Proposed Rule Making, ^(NPRM) you would have an opportunity to file comments and/or reply comments at that time to the NPRM.

I trust that this reply is responsive to your letter of 9-3-97.

MJ DePort

FCC

APPENDIX A

AMENDED AGREEMENT BETWEEN THE FIELD OPERATIONS BUREAU OF THE FEDERAL COMMUNICATIONS COMMISSION AND THE AMERICAN RADIO RELAY LEAGUE, INC., REGARDING THE USE OF AMATEUR VOLUNTEERS

1. *The Field Operations Bureau (FOB) of the Federal Communications Commission (FCC) and the American Radio Relay League, Incorporated (ARRL), hereby agree to the following amended provisions for cooperation in a joint effort to improve Commission rules compliance in the Amateur Radio Service, as provided for by Section 4(f)(4)(C) of the Communications Act of 1934, as amended, 47 U.S.C. 154(f)(4)(C). This amended agreement supersedes the agreement executed between FOB and ARRL and dated March 28, 1984, under which the Amateur Auxiliary previously operated.*

2. *The objectives of this program are to foster among radio amateurs a wider knowledge of and better compliance with laws, rules and regulations governing the Amateur Radio Service, to extend the tradition of self-regulation and self-administration of the Service by amateurs, to promote rule compliance in the Amateur Radio Service, to enhance the opportunity for individual amateurs to contribute to the public welfare as outlined in the basis and purpose of the Amateur Radio Service, and to enable FOB to more efficiently and effectively use its manpower and resources in enforcing the Communications Act and Commission Rules.*

3. *FOB has entered into this agreement with ARRL in order to provide FOB with the voluntary, uncompensated services of the League's field organization pursuant to the authority contained in Section 104 of the Communications Amendments Act of 1982, Public Law 97-259, 96 Stat. 1087. The League's rules for the operation of the functions of field appointees and volunteers may change from time to time, and ARRL agrees to inform FOB promptly of any changes which may have a bearing on the provision of volunteer services to FOB under this agreement.*

4. *The foundation of the program created by this agreement is the ARRL's Official Observers, and they will be known as the ARRL Amateur Auxiliary to the Field Operations Bureau. The ARRL field organization, operating pursuant to ARRL guidelines and procedures, is the focal point of its Amateur Auxiliary program. That program involves the obtaining, coordinating, and conveyance of information from organized amateurs to the FOB, principally through ARRL's Washington office. Coordination of information gathering prior to submission to FOB may be through Local Auxiliary/FOB contacts. The Chief, Enforcement Division, FOB, is responsible for the overview and direction of the Amateur Auxiliary program from the FCC's standpoint, in conjunction with ARRL officers and staff. ARRL and FOB will jointly review policies, practices and procedures, and will work together toward solutions to problems and consistency in enforcement matters and efforts to promote and improve self-regulation and voluntary compliance.*

5. *ARRL agrees to provide voluntary and uncompensated services to FCC as follows:*

a. *to recruit and train amateur radio operators to monitor Amateur Radio Service frequencies, as volunteers and without compensation;*

b. *to coordinate the efforts of those volunteers in detecting improper Amateur Radio transmissions made by licensed radio amateurs and in conveying to Commission personnel the resulting information that is essential to the enforcement of the provisions of the Communications Act and the regulations prescribed by the Commission relating to the Amateur Radio Service;*

c. *to cause those volunteers to issue advisory notices, under the general direction of the Commission, to persons who apparently have violated any provision of the Communications Act or the regulations prescribed by the Commission relating to the Amateur Radio Service, and ensuring that such advisory notices are not misconstrued as official Commission sanctions or enforcement actions which can only be issued by the Commission.*

6. FOB agrees to the following:

a. to review and consider the information submitted to FOB by ARRL and to initiate any actions as may, in the Commission's opinion, be appropriate and consistent with the Commission's enforcement policies;

b. to advise ARRL, upon request and in as timely a manner as possible, of the actions taken, or reasons why actions were not taken, in those infrequent instances where ARRL submits information and enforcement recommendations to FOB on individual violation cases that have not responded to advisory notices and where the violations have continued;

c. to attempt to withhold from public release or disclosure, on the basis of the submission of a express written request for confidentiality in each specific instance and Freedom of Information Act (FOIA) Exemption 7(D), 5 U. S. C. §552(b)(7)(D), the identity of and/or any identifying data regarding individuals associated with the Amateur Auxiliary that have furnished information and enforcement recommendations to FOB. ARRL is aware that if any Commission enforcement matter proceeds to an administrative hearing or court trial status, the determination of whether such withheld information should be disclosed or continued to be withheld may rest with the administrative law judge or the judge of the court involved, and not FOB. ARRL further understands that there is no FOIA exemption for withholding the content, substance or details of such a complaint after the conclusion of an FOB investigation of the matter, and so long as the release of that information cannot interfere with an ongoing investigation. ARRL further understands and acknowledges that members of the Amateur Auxiliary are not considered government employees in any manner. Therefore, neither individual members of the volunteer Amateur Auxiliary nor the ARRL are entitled to receive legal representation from FOB, FCC or the federal government. Accordingly, they must not anticipate or expect legal representation or otherwise to be held harmless in any matter that may arise as a result of Auxiliary activities. With the above understanding, however, FOB will seek in any enforcement proceeding, consistent with existing rules and policies, to avoid any unnecessary exposure of those who provide information to the Commission through the Amateur Auxiliary program.

d. to assist ARRL in the training of volunteers, in publicizing the objectives and the accomplishments of the program, and in identifying and implementing improvements to the program, based on accumulated experience.

7. The primary point of contact between ARRL and FCC shall be the ARRL Washington office under the direction of the ARRL President and the Office of the Chief, Enforcement Division, FOB. It is understood that certain FOB field offices have favorable working relationships with Official Observers and Official Observer Coordinators. However, submission of materials to FOB where enforcement is requested shall in each case be through the ARRL Washington Office.

8. All prospective members of the Amateur Auxiliary will be required to undergo a training and certification procedure administered by ARRL, and successful completion of such training and certification will be required for enrollment.

9. The above cooperative program is hereby agreed to by the signatories hereto and shall become effective as of the date shown below. This agreement may be amended by the mutual consent and agreement of both parties and will remain in effect until terminated. FOB and ARRL will periodically review this agreement and coordinate such revisions as may be necessary. This agreement may be terminated by either party hereto upon written notice to the other party.

FOR FCC:


Lauren J. Belvin, Chief
Enforcement Division
Field Operations Bureau

Date:

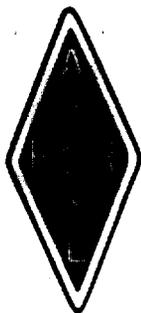
February 24, 1994

FOR ARRL:


George C. Wilson, III
Its President

Date: February 25, 1994

EXHIBIT D



THE AMERICAN RADIO RELAY LEAGUE, INC.

INTERNATIONAL SECRETARIAT OF THE INTERNATIONAL AMATEUR RADIO UNION

ADMINISTRATIVE HEADQUARTERS NEWINGTON CONNECTICUT, U.S.A. 06111-1494

TELEPHONE 860-334-0200 • FAX 860-594-0259 • INTERNET: info@arrl.org • WWW: <http://www.arrl.org/>

June 5, 1997

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K1ZZ, EXECUTIVE VICE PRESIDENT
SECRETARY

BARRY J. SHELLEY
N1YXJ, CHIEF FINANCIAL OFFICER

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Dear 

Thank you for your interest in the Amateur Auxiliary to the FCC Compliance and Information Bureau. There is an active Amateur Auxiliary in your Section. Please be advised that **ARRL Membership is required** to be appointed.

Enclosed is a brochure which explains the Amateur Auxiliary and an appointment application which you can fill out and return to your Official Observer Coordinator or Section Manager:

Tim Childers, KB9FBI
773 E College Av.
Jacksonville, IL 62650

If your application is approved, we will receive an FSD-211 Auxiliary Appointment Recommendation, at which time we'll ship you an Auxiliary Training package and an open book Auxiliary Certification Examination. After having passed the exam, you'll be a fully certified member of the Amateur Auxiliary.

With 73,

Jay Mabey, NU0X
Senior Assistant Manager
Field Services Department

cc: Official Observer Coordinator

EXHIBIT E



Your ARRL Membership Benefits

QST, our monthly membership journal is simply **THE SOURCE** for news and information on any topic that's part of, or relates to, Amateur Radio. Whether you're interested in contesting, DXing, or radios, accessories and antennas you can build at home, **QST** covers them all. And there's more: New trends and the latest technology, fiction, humor, news, club activities, rules and regulations, special events, packet radio, and much more.

In addition, you'll have access to our: Technical Information Service, Ham Radio Equipment Insurance Program, Outgoing QSL Service, ARRL Field Organization and Operating Awards programs.

Lastly, your ARRL membership helps fund the following invaluable services. You may use one or two of these services during your membership, or you might take advantage of them all. As an ARRL member you insure their existence and continuation.

- | | |
|---|---|
| <ul style="list-style-type: none">• Representation of your interests in Washington• Regulatory Information Department, providing information on:<ul style="list-style-type: none">FCC/regulatory questionsAntenna/tower/zoning restriction problemsReciprocal licensing proceduresVolunteer Counsel Program | <ul style="list-style-type: none">• Volunteer Examiner Coordinator program• Amateur Radio Emergency Service• Registered Amateur Radio Instructor program• WIAW code practice, bulletins and code proficiency sessions• ARRL sponsored contests. |
|---|---|

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