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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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ENFORCEMENT DIVISION  
TELECOMMUNICATIONS  
BUREAU  
RM-9259

In the Matter of: )  
)  
Compliance With Applicable Voluntary )  
Band Plans in the Amateur Radio Service )

Comment in Opposition

By:

William C. Wells  
Licensee of Amateur Radio Station WA8HSU  
And holder of GROL # PG-19-19109  
And former holder of P2-19-11796, P1-19-16720, P1-19-23030,  
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To: The Commission

Summary

As a current member of the American Radio Relay League, Inc., member number 1233411, my input was never solicited in any way about this matter prior to its being filed with the Commission. The League purports to speak for me and all other league members in this matter but this is simply not true. It is amazing that the League would go this far without consulting its members. The League has released information to its membership through "the ARRL Letter" concerning their filing with the Commission but this information is sharply at odds with their actual filing. The League filing even "argues with itself." It is misleading. This leads me to believe that there is a "hidden agenda" and ulterior motives at work here. It is my personal belief that this "hidden agenda" involves the removal of fast scan television repeaters from the 70 centimeter band in violation of the Commission's Rules and in a way that seeks to skirt the protections in "The Administrative Procedures Act." Instead of petitioning the Commission to remove this repeater mode from the band, the petition seeks to facilitate this result by asking the Commission to recognize "local" band plans, which are the product of special interest, private sector political entities purporting to serve as "Frequency Coordinators." Some of those entities have an

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agenda of making certain FCC designated emission types impossible to use on a band, by crowding the band with narrow band FM<sup>1</sup>. Other possible "hidden agendas" will be considered in the Discussions section of this filing. I call on the League to immediately withdraw this inappropriate petition, for the Commission to wholly reject it, and for the valuable time of the Commission staff to be allocated for other urgent issues. **The Commission should therefore dismiss this request of the American Radio Relay League, Inc. with full prejudice.**

### Discussion

In July of 1995 I was elected Chairman of the Indiana Repeater Council which at that time was the only "entity, recognized in a local or regional area by amateur operators whose stations are eligible to be auxiliary or repeater stations, that recommends transmit/receive channels and associated operating and technical parameters for such stations in order to avoid or minimize potential interference" in the state of Indiana<sup>2</sup>. The year before the Mid-America Coordination Council, or MACC, a loose confederation of such entities covering about 40 % of the United States had passed a resolution calling for the end of Amateur Television in the 70-centimeter band by January 1, 2000.

At the annual meeting of MACC in April 1996 I argued that the MACC Amateur Television ban should be rescinded. What was finally agreed to was a statement that Amateur Television should be "actively discouraged in the 70 centimeter band" with no sunset date being specified.

Amateur television, and amateur television repeaters on this band, are among the emission types designated by the Commission for use on this band. The use of such "Frequency Coordination" to eliminate an emission type from a band violates the FCC Rules, and would summarily reduce the rights of each individual amateur or club licensee of the Commission to use their government licenses.

When I was a Novice Class Licensee of the Commission back in 1963 I was invited to visit the station of an older Technician Class Licensee to see "a television station." What I was shown that day was a 70-centimeter Amateur Television station. The Commission Rules have permitted television transmissions in the 70-centimeter band continuously for many years down to the present time. This policy permitted the development of NTSC color television as it exists today during the period of 1930 through 1960.

Amateur Television users were active in the 70-centimeter band over this period and down to the present day. They were active in the 70-centimeter band when nobody else wanted the band. It would be unjust to remove these users

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<sup>1</sup> Particularly narrow band FM auxiliary stations

<sup>2</sup> 47 CFR Section 97.3 (a) (21)

from the 70-centimeter band simply because other users have discovered the band. It would be immoral to allow any Frequency Coordinator entity or any confederation of such entities to remove Amateur Television from the 70-centimeter band by simply changing a private sector band plan to conflict with the Commission's Rules thus depriving these users of any relief provided by "The Administrative Procedures Act."<sup>3</sup>

The public requires the protection of the Administrative Procedures Act, not a circumvention by those who present misleading petitions to exercise secret, undisclosed ulterior motives. Further, the public investment in the equipment to transmit and receive this emission type on this band must be respected.

By approving this petition by the American Radio Relay League the Commission would be doing exactly that. The League and the Frequency Coordination entities would be granted a power just as effective as a Commission rule change without being subjected to the safeguards guaranteed to the public by "The Administrative Procedures Act." This would be a very dangerous power to give any non-governmental agency especially when these private sector entities recognized by the League have already stated that that's exactly what they want to do. The Commission must deny them this power.

The power already granted these entities in the current Commission Rules is sufficient to allow them to perform their functions. The statement at 47 CFR Section 97.205 (c) about who has responsibility to resolve cases of harmful interference is already sufficient without any change in the "black letter" rules and without the increase in authority which this petition would grant to the League and certain Frequency Coordinators. The statement that a Frequency Coordinator "recommends" found at 47 CFR Section 97.3 (a) (21) is already sufficient without any change in the "black letter" rules and without the increase in authority which this petition would grant. Granting this petition would invite exactly the kind of abuse of power which I have described and would deny the displaced users any form of due process. This would invite a Constitutional challenge under the Fifth Amendment and the Fourteenth Amendment to the Constitution of The United States.

In "The ARRL Letter" Vol. 17, No. 15 dated April 10, 1998 under the headline "ARRL Asks FCC to Support Voluntary Band Plans" The League stated: "The League requests the Commission "at an early date" declare that good amateur practice 'anticipates compliance with the accepted voluntary international, national, and regional band plans adopted by cooperation and coordination' within the Amateur Radio Service." Notice that the issue date of

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<sup>3</sup> It seems that instead of sponsoring a petition to change the rules and remove ATV as an emission type from this band, there is an ulterior motive to mislead the Commission into adopting the same result by recognizing those with improper private sector band plans that omit this mode. Such schemes certainly violate the spirit of the FCC Rules and perhaps the letter of those rules as well.

this edition of "The ARRL Letter" follows by a full week the file date of the League petition. This story also states that this was "following up on action taken at the January ARRL Board of Directors' meeting." There was never any notice that such action was going to be taken and hence no opportunity for Member input. This is therefore another example of the League presuming to speak for its membership, which is not proper.

In the next story in this edition of "The ARRL Letter" under the headline "League Inaugurates Arbitration Service" the League makes the following statement: "In disputes involving frequency coordination, the ARRL has reserved sole authority to designate the appropriate responsible coordinating organization." This statement is in direct conflict with the Commission's Rules. At 47 CFR Section 97.3 (a) (21) the Commission's Rules state the following: "*Frequency Coordinator*. An entity, recognized in a local or regional area by amateur operators whose stations are eligible to be auxiliary or repeater stations, that recommends transmit/receive channels and associated operating and technical parameters for such stations in order to avoid or minimize potential interference." [Emphasis Added] This League action therefore conflicts directly with the Commission's Rules, which empower "local or regional amateur operators whose stations are eligible to be auxiliary or repeater stations", not the League to appoint and recognize a Frequency Coordinator.

In Indiana the repeater community has spoken loudly in this matter. Due to the consistent poor and incompetent service provided by the Indiana Repeater Council, the ongoing corruption of the Indiana Repeater Council, and the consistent favoritism shown by the Indiana Repeater Council toward a select few all of which I attempted to combat during my year as Chairman of that organization there has been a mass exodus of members from the Indiana Repeater Council to a new organization: The Midwest Spectrum Management Alliance, Inc. The Midwest Spectrum Management Alliance, Inc. currently has two and one half times the membership of The Indiana Repeater Council. The Midwest Spectrum Management Alliance, Inc. also currently has a membership which is 40% greater than the peak membership of The Indiana Repeater Council over the last 25 years. All members of The Midwest Spectrum Management Alliance, Inc. "MiSMA" have signed the following affidavit:

"YES! I would like you to keep working for me, and recognize MiSMA, Inc. as my frequency coordinator as per 47 CFR, section 97.3 (a) (21)."

This support is therefore clearly stated and clearly demonstrable. These facts notwithstanding the League has consistently supported the Indiana Repeater Council and has worked to undermined the work of The Midwest Spectrum Management Alliance, Inc. in violation of the Commission's Rules.

In a proceeding dealing with regulation of complex system operation and expansion of repeater subbands, the Commission inquired about the sufficiency of amateur voluntary band planning efforts. It found, following notice and comment thereon, as follows:

In response to our inquiries concerning the adequacy of the current system of voluntary spectrum management and the necessity for the limitation on the effective radiated power of stations in repeater operation ..., we received many informative and helpful responses. These comments indicated, generally, a widespread dissatisfaction with the ERP limitations on repeater operation, as well as a belief that the Amateur Service's voluntary spectrum management system functions with considerable effectiveness in most instances<sup>4</sup>.

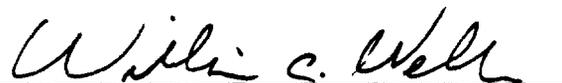
The best possible advice that the Commission can follow is contained in the old proverb, "If its not broken, don't fix it." The Commission found that the Amateur Community was satisfied with voluntary spectrum management in 1977. The only dissatisfaction being expressed today comes from a lobbyist and certain private sector frequency coordinators who lust for increased power over the Amateur community.

In view of the foregoing examples of arrogant abuse of the power, and activities of a private sector entity purporting to act as a government, the Commission would be ill-advised to grant the League request which would only have the affect of abdicating the responsibilities of the Commission, and turning them over to what is, essentially, a lobbyist.

### Conclusion

The Commission should wholly reject this petition, reaffirm its current Rules, and state that in situations such as exist in Indiana that the "marketplace" and not a private sector lobbyist shall ultimately determine who shall serve as the "recognized" Frequency Coordinator.

Respectfully Submitted,



William C. Wells, WA8HSU

April 28, 1998

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<sup>4</sup> Deregulation of Part 97 of the Commission's Rules to simplify the licensing and operation of complex systems of stations and modify repeater subbands in the Amateur Radio Service, 66 FCC.2d 207, 211-12 (1977).

**Certificate of Service**

I hereby swear that a copy of the foregoing was served on the American Radio Relay League, Inc. by USPS First Class Mail addressed to their General Counsel at the following address:

Christopher D. Imlay  
Booth, Freret, Imlay & Tepper, P.C.  
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Washington, DC 20016-4120



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William C. Wells  
April 28, 1998