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

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

RM-9259

To: The Chief, Private Wireless Division  
Wireless Telecommunications Bureau

**COMMENTS OF WAYNE OVERBECK<sup>1</sup>**

**IN OPPOSITION TO REQUEST FOR DECLARATORY RULING OF ARRL**

In the above-captioned Request, the American Radio Relay League, Inc. (ARRL) has requested that the Private Wireless Division, acting under delegated authority, issue a declaratory ruling to "clarify" that "good amateur practice" as contemplated by 47 C.F.R. 97.101(a) "entails compliance with the voluntary band plans adopted and amended from time to time through the cooperative efforts of amateur radio operators across the country...."

In essence, ARRL seems to be asking for a declaration that stops just short of making it a per se violation of Section 97.101(a) for an amateur to deviate from a "voluntary" local, regional, national or international band plan. By not quite making deviations from these band plans into rule violations, the Commission can avoid becoming entangled in excessive enforcement burdens, while giving added support to those who advocate great-

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<sup>1</sup> I am a Professor of Communications at California State University, Fullerton, and a former communications attorney. I hold Ph.D. and J.D. degrees and am the author of *Major Principles of Media Law* (Harcourt Brace), a communications law textbook now in its ninth edition. I served four terms as an elected vice director of the American Radio Relay League; in that capacity, I was intimately involved in local band planning, observing shortcomings of the process that the Commission should consider in evaluating the above-referenced Request.

er compliance with these "voluntary" band plans, ARRL contends.

### SUMMARY

The undersigned believes this Request for a Declaratory Ruling should not be granted for several reasons.

Although billed as a mere request for a clarification of existing Commission policy, such a declaration would in fact signal a fundamental shift in policy concerning one of the most contentious issues in amateur radio, voluntary band planning intended to resolve competing demands for limited spectrum among various user groups.

I believe the Commission should not become involved in this matter for the following reasons:

\*ARRL is seeking a Commission endorsement not only of its own national VHF/UHF band plans but also of local and regional band plans that differ from the national band plans, as ARRL's Request makes clear.<sup>2</sup> These local band plans are usually adopted by repeater councils, not all of which are democratic bodies that consider the needs of all VHF/UHF operators. All too often local band plans have been drawn up by a few people who considered little more than the needs of the FM/repeater community; other user groups have sometimes had little or no input in the local band-planning process. Even ARRL concedes that the band-planning process has enjoyed "varying degrees of success."<sup>3</sup> ARRL's executive vice president has acknowledged in *QST*, ARRL's official journal, that a major review of band plans would result from the Commission declaring that

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<sup>2</sup> See Request for Declaratory Ruling at page 5.

<sup>3</sup> Request for Declaratory Ruling at page 5.

compliance is "not a purely voluntary matter."<sup>4</sup> If "good amateur practice" requires all amateurs to comply with these local band plans, shouldn't the Commission also adopt and enforce procedural safeguards to assure fairness and due process in their development and implementation?

\*Local band plans vary from one state or county to the next, making it difficult or impossible for traveling amateurs and those who engage in long-distance communication to comply with all of them. Those who utilize narrow-bandwidth modes for weak-signal and satellite communications generally support the national band plans and would like to see them observed more faithfully by the FM/repeater community, but they sometimes find it impossible to live with the varying local band plans adopted by repeater councils: their signals freely cross repeater councils' jurisdictional boundaries.

\*ARRL contends that all amateurs should be familiar with the applicable band plans. And yet, most of the local band plans are arcane documents buried in the files of repeater councils. They do NOT appear in *The ARRL Repeater Directory*. Nor do they appear in the band plan section of ARRL's website. The most rudimentary due process safeguards are lacking if amateurs are to be held accountable for complying with band plans that they cannot readily obtain and study.

\*If the Commission endorses these various local band plans, there will inevitably be new conflicts between repeater councils that believe they have a mandate from the Commission and non-repeater interest groups that believe they have been given short shrift in the local planning process. When ARRL itself concedes that band planning has met with "varying degrees of success"--and an FCC declaration that compliance is not "purely voluntary" will trigger a major review of band plans--it is hard to imagine how the Commission

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<sup>4</sup> See *QST*, March, 1998, page 9.

could hope to avoid being drawn into these emotionally charged controversies.

If the Commission is to revisit the band planning process at this time, I believe it should be done only through a formal Notice of Inquiry or Notice of Proposed Rule Making, allowing these very controversial issues to be fully addressed by all interested parties. This is not the sort of issue that lends itself to summary disposition under delegated authority.

#### **I. DIVERSE GROUPS REGULARLY COMPETE FOR SPECTRUM IN THE AMATEUR BANDS; ACCEPTANCE OF LOCAL BAND PLANS IS BY NO MEANS UNIVERSAL.**

Over the long run, no issue in amateur radio has been more contentious and controversial than band planning. There have been repeated spectrum wars involving amateurs with varying operating interests. In the VHF/UHF spectrum alone, there are numerous incompatible operating activities, all competing for the limited spectrum available.

FM repeaters, of course, occupy the vast majority of the VHF/UHF bands and attract the majority of operators. But there are numerous other operating activities, each with avid devotees having their own spectrum needs.

Amateurs use the VHF/UHF spectrum for, among other things, amateur television (utilizing both simplex and ATV repeater modes), digital and packet activities, long-distance terrestrial and "moonbounce" communication using "weak signal" modes (e.g., CW and SSB), long-distance communication via amateur satellites (also on CW and SSB), hidden-transmitter hunting, and non-repeater-based FM communications.

There have been recurring conflicts among these various users over band planning issues. To illustrate the problems involved, I will cite just a few examples.

- 1) About 10 years ago, I was called upon as an ARRL official to attempt to resolve

a conflict between a local repeater council and amateur satellite operators. Several satellite operators were using frequencies between 144.300 and 144.500 MHz for CW and SSB transmissions to orbiting amateur satellites, in full compliance with international agreements and the national ARRL band plan (which reserves those frequencies for satellite communication).

However, the local repeater council in Southern California had allocated that band segment for local communication using wide-bandwidth modes, and a prominent repeater council leader was outraged at the interference to local communications caused by satellite operators. "That satellite is supposed to be turned off when it passes over Southern California; our local band plan takes priority," he insisted.

The satellite operators were equally outraged at the idea that their right to use these frequencies for international satellite communications, although fully in accord with worldwide and national band plans, could be denied by a local repeater council. These frequencies are, after all, well outside the 145-148 MHz repeater subband.

2) In many areas of the United States, including certain metropolitan areas in the Central States, there have been recurring conflicts between repeater councils and amateur television operators over band planning. The repeater councils, of course, have tended to reserve the bulk of the 420 MHz band for FM repeater use: FM repeater owners are, after all, their primary constituents. ATV operators, who need large blocks of spectrum because of the wide bandwidth of television signals, have sometimes operated in band segments set aside for FM repeaters in local 420 MHz band plans--simply because they felt they had no choice. In some cases, traditional ATV channels were assigned for repeater use over the objections of ATV operators. The shift to 1240 MHz by ATV operators has alleviated (but not eliminated) these conflicts. And new conflicts between the FM/repeater community

and ATV operators have emerged at 1240 MHz as that band became more heavily utilized.

3) Several years ago the "220 Spectrum Management Association," which coordinates repeaters in the 222 MHz band in Southern California, adopted a new band plan for 222-225 MHz. The plan reserved virtually the entire band for repeater use, with FM simplex and digital activities squeezed between the repeater inputs and outputs. Weak signal operators were given the bottom 10 KHz of the band (222 to 222.010 MHz), with a wide-bandwidth repeater input centered at 222.020 MHz. Another repeater was assigned to 222.100 MHz, the ARRL-recognized "national calling frequency" for weak-signal communications. Under this band plan, at least 13 repeaters were coordinated to operate in the nationally recognized weak signal subband of 222 to 222.150 MHz.

Like satellite operators, weak-signal operators find it very difficult to comply with local band plans that do not recognize their nationally and internationally agreed-upon operating frequencies. These amateurs routinely communicate over great distances, crossing the jurisdictional boundaries of many local repeater councils. E.m.e. ("moonbounce") operators, for example, routinely engage in worldwide communication on a daily basis. Some of the best-equipped moonbounce stations have completed two-way contacts with more than 100 countries on the 144 MHz band. Other propagation modes such as meteor scatter, tropospheric ducting, aurora and sporadic E frequently enable weak-signal operators to cover much of the North American continent in the VHF/UHF amateur bands.

To resolve problems such as the one cited here, ARRL petitioned the Commission to set aside a small portion of the 222-225 MHz band for non-repeater uses, a request the Commission granted in its Report and Order in PR Docket No. 92-289. The Commission's action compelled the repeater council cited above to relocate repeaters that had inputs below 222.150 MHz. However, the council then assigned non-repeater activities to share

this band segment with weak-signal operators, again failing to comply fully with the national band plan.

If the Commission now chooses to give its imprimatur to local band planning such as that cited in these examples, thousands of amateurs around the United States will not be able to pursue heretofore lawful amateur activities if they wish to observe "good amateur practice." ARRL claims that there is nearly universal acceptance of band plans, including the varying local band plans. That is not always true.

## **II. THE COMMISSION MUST ADOPT PROCEDURAL SAFEGUARDS TO ASSURE DUE PROCESS IF THIS REQUEST IS GRANTED.**

One troubling flaw in ARRL's Request is that it does not specify precisely what band plans the Commission is being asked to endorse. Nor does it address the foreseeable (and probably inevitable) emergence of competing band plans in local communities where a band planning body (usually a repeater council) fails to accommodate the needs of non-repeater users.

ARRL policy has long given local and regional band plans precedence over the ARRL's national band plans published in *The ARRL Repeater Directory*. As the *Repeater Directory* points out, "In some cases, however, local conditions may dictate a variation from the national band plan. In these cases, the written determination of the regional frequency coordinating body shall prevail..."<sup>5</sup>

In its Request in this matter, ARRL has reiterated its position that local band plans take priority over national ones: "The League has long recognized that compliance with regional band plans developed by recognized coordination bodies (which may well conflict

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<sup>5</sup> *The ARRL Repeater Directory, 1996-97 edition, page 36.*

with national band plans) is required as an essential element of "good amateur practice" in regions in which those band plans apply.<sup>6</sup>

It seems incomprehensible for ARRL to continue to support--and seek Commission sanction of--the concept of giving local band plans precedence over national ones. In the official "It Seems to Us..." column of *QST*, which traditionally states ARRL policy on issues affecting amateur radio, ARRL's executive vice president recently declared, "In the HF bands and in some segments of VHF and higher bands, band planning has to be an international process because our signals propagate internationally, either directly or through satellites. (emphasis added).<sup>7</sup>

Nonetheless, in its Request, ARRL reiterates its policy of deferring to local and regional spectrum managers, who are almost always repeater coordinators, to do band planning. Who gave these regional bodies the authority to dictate band plans to the entire amateur community? If the FCC endorses such band-planning efforts by declaring that amateurs who do not follow their band plans are not engaged in "good amateur practice," will the Commission also accredit local band planning bodies?

ARRL's Request proposes no safeguards whatever to assure that the local band planning is done by truly democratic bodies that consider the needs of all VHF/UHF operators, not merely the needs of FM repeater owners and users.

ARRL's Request concedes that there have been abuses in the band planning process: "The band planning effort is done at multiple, discrete levels, and, candidly, with varying degrees of success."<sup>8</sup> This concession alone is reason enough for the Commission

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<sup>6</sup> Request for Declaratory Ruling at page 5.

<sup>7</sup> See *QST*, March, 1998, page 9.

<sup>8</sup> Request for Declaratory Ruling at page 4.

to seriously question the wisdom of granting this Request.

If all amateurs must adhere to local band plans to be in compliance with "good amateur practice," by whose authority do repeater councils presume to do band planning for non-repeater users of the VHF/UHF bands? Should not band planning for the non-repeater band segments be done by weak-signal and satellite user groups, in cooperation with others outside the FM repeater community?

Suppose a non-repeater group finds it impossible to live with a local repeater council's band plan. May it then adopt its own mutually exclusive band plan and ask the Commission to determine which band plan is valid? Does the Commission wish to undertake this kind of administrative burden?

Alternately, would it be appropriate for the Commission to issue a ruling limiting repeater councils to band planning within the repeater subbands recognized in Part 97? While some repeater councils call themselves "frequency coordinators" or "spectrum managers" and claim the right to adopt band plans governing all amateur activities in the VHF/UHF region, that claim may be open to serious question.

Moreover, most regional and local band plans are buried in the files of repeater councils. If "good amateur practice" requires all amateurs to be familiar with and adhere to these band plans, how can the nation's 750,000 amateur licensees all be expected to comply? Only the ARRL national band plans--not the local band plans that take precedence over the ARRL plans--are published in the *Repeater Directory* and on ARRL's website.

Repeater councils' territories sometimes have crazy-quilt boundaries. For example, there are four different repeater councils having band plans in California. Three councils have plans governing different bands in Southern California. How can traveling amateurs know when they have left the jurisdiction of one repeater council and entered the territory

of another that may have a different band plan? Like travelers, weak-signal operators have difficulty complying with the varying band plans. They communicate beyond the jurisdictional boundaries of their own local repeater councils every day, with or without enhanced propagation. If the local band plan differs from those of neighboring repeater councils, how can weak-signal operators hope to comply with all of them? How can they engage in "good amateur practice" when the rules change at county or state lines?

Over the years ARRL's policy of giving local band plans precedence over its own national band plans has caused numerous problems for weak-signal and satellite communicators; it would be far better for the Commission to recognize uniform national band plans for the non-repeater portions of the VHF/UHF bands, if the Commission chooses to endorse any of the existing band plans.

If the Commission does what ARRL is seeking, it must consider still another due process question: whether such action would further encourage the vigilantism already prevalent in amateur radio today.

Clearly, ARRL is not seeking Commission enforcement of the "voluntary" band plans at this point. Instead, ARRL is seeking a ruling that would give its own local officials--and unfortunately, self-appointed vigilantes as well--leverage to exert pressure on (and perhaps harass) those whose activities may inevitably be inconsistent with a local band plan. This could become a particular burden for weak-signal and satellite operators whose nationally and internationally recognized operating frequencies have sometimes been usurped locally for incompatible uses, typically involving wide-bandwidth modes.

It is hard to imagine how the Commission could endorse "voluntary" local band plans, as ARRL proposes, without triggering many new demands for Commission involvement in the recurring controversies over band planning. As ARRL's executive vice presi-

dent recently acknowledged in his *QST* "It Seems to Us..." column on band planning, "If the FCC affirms that compliance with band plans is not a purely voluntary matter, calls for improvements in the existing processes for development, reviewing, and revising band plans are certain to follow."<sup>9</sup>

Finally, the Commission should not overlook the fact that as technology evolves, amateur radio is becoming an ever more diverse avocation. The conflicts between user groups that have occurred in the past could pale by comparison to those that may arise in the future. Unless the Commission is prepared to play an ever-expanding role in mediating the competing claims of various user groups, it should not involve itself in the band planning process by making compliance anything other than voluntary.

### **III. HF BAND PLANNING IS ALSO CONTROVERSIAL; MAKING COMPLIANCE LESS THAN VOLUNTARY WOULD REQUIRE MORE COMMISSION INVOLVEMENT.**

Up to this point, the vagaries of VHF/UHF band planning have been the entire focus of this pleading. And yet, HF planning has also been fraught with controversy.

In addition to the mandatory division of the HF bands between voice segments and subbands reserved for non-voice modes, there are numerous provisions for band-sharing covered by voluntary band plans. For example, there are voluntary agreements on the placement of CW, RTTY and the newer digital modes within the non-voice subbands--and these have been highly controversial. Similarly, there are voluntary "DX windows" on certain HF bands, among other HF band plan provisions. These, too, have been controversial at times.

If the Commission grants ARRL's Request to confirm that "compliance with band

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<sup>9</sup> See *QST* for March, 1998, page 9.

plans is not a purely voluntary matter," the Commission cannot avoid becoming more involved in disputes concerning the fairness and appropriateness of HF band plans as well as VHF/UHF band plans. Those who disapprove of everything from digital frequency allotments to DX windows would seek redress from the Commission, should it declare that compliance is "not a purely voluntary matter."

### CONCLUSION

ARRL's Request talks of "rogue operators" causing malicious interference by engaging in FM simplex communication (or even code practice) on repeater inputs. But its proposed solution--making all of the voluntary band plans essentially mandatory--is overkill. It would represent a fundamental shift in national FCC policy toward amateur radio to solve local problems in a few communities. And its unintended result would be to place a severe burden on non-repeater operators who may not be able to comply with all of the mutually exclusive provisions of various local band plans. The Commission already has adequate tools to address the problem of malicious interference. This Request seeks an unnecessary and potentially very burdensome new level of federal involvement in amateur radio activities at the grassroots level.

From a public policy standpoint, this Request raises many difficult questions for which it offers no viable solutions. Perhaps that is why four ARRL Directors took the unusual step of asking to be recorded as voting against this proposal in the Minutes of the January, 1998, meeting of the Board of Directors.<sup>10</sup> And that is why I have taken the very unusual step of filing comments in opposition to a non-docketed Request for a Declaratory

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<sup>10</sup> See Minute 72 of the 1998 Annual Meeting of the ARRL Board of Directors, reported in *QST*, March, 1998, page 65.

Ruling. The policy implications raised here should be addressed more fully in a docketed proceeding if any action is to be taken in response to ARRL's Request.

Respectfully submitted,



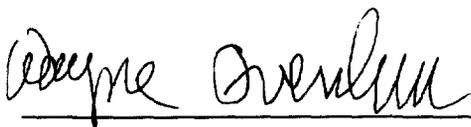
Wayne Overbeck  
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April 15, 1998

#### **CERTIFICATE OF SERVICE**

I, Wayne Overbeck, certify that on this 16th day of April, 1998, I caused copies of the foregoing "Opposition to Request for Declaratory Ruling" to be mailed first class, postage prepaid, to the following:

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