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

In the Matter of) RM-9259
)
Compliance With Applicable Voluntary)
Band Plans in the Amateur Radio Service)

To: The Chief, Private Wireless Division
Wireless Telecommunications Bureau

COMMENTS IN OPPOSITION TO
REQUEST FOR DECLARATORY RULING

FROM: Steve Waterman, K4CJX
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May 12, 1998

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Steve Waterman, K4CJX, a licensed Amateur Radio operator since 1954, and a Vice President for a telecommunications firm for 18 years, respectfully submits the following comments in opposition to the Request for Declaratory Ruling made by the American Radio Relay League. According to my understanding of the Law, the Request for **Declaratory Ruling**, if granted, would constitute an unlawful delegation by the Commission of its rule-making authority.

My understanding is that the Commission has no authority under the **Communications Act of 1934** to make such a delegation. The ARRL is requesting that the Commission grant to it the right to establish a set of "band plans" in which amateurs must operate or be subject to such charges that they have failed to observe "good amateur practices" and such sanctions as the Commission may impose. It is my contention that for the above reasons, any court would not

sustain the enforcement of such sanctions to observe these "band plans." Any declaratory ruling as requested by the ARRL would, be so vague and indefinite as to cause uncertainty and confusion in the amateur community. Which voluntary organization has a suitable band plan to be observed? What constitutes "a voluntary, accepted band plan"? Is it a plan devised and monitored by ARRL? Can any other organization provide a similar substantial band plan for the same purposes? Where do more than 500,000 amateur licensee who are not members of the ARRL or any other organization find such a band plans? How would the issuance of a Declaratory Ruling "provide sufficient flexibility for informal, cooperative resolution of interference problems without resort to the Commission" or to any other organization that purports to represent the entire United States Amateur community?

The existing rules are clear and unambiguous with respect to interference. Essentially, the ARRL request is concerning the restriction the operating frequencies of amateurs who have a right to operate on any authorized frequency in any authorized mode, authorized in accordance with the rules of the Commission and their granted Amateur licenses. Only the Commission has a right to enforce "good amateur operating practice". Can the Commission abrogate its right of enforcement or should it be put in the middle of mass confusion with respect to a myriad of disagreements within the Amateur community? Regardless, the establishment of band-plans, voluntary or otherwise, is, in my opinion. negative public policy.

The ARRL's Request for Declaratory Ruling does not illustrate the *need* for their request, other

than there has been “some notable deterioration in adherence to the plans”. The ARRL states non-compliance with their accepted band-plan which causes interference to one or more amateur stations that is operating in accordance with this accepted band-plan cannot be considered “good amateur practice.” I agree that if an amateur station is operating on any frequency (whether part of a band-plan or not) where another station is already operating such operation is not “good amateur practice”. An obvious example of this is the VHF/UHF repeater frequencies. The point is that *interference* is covered by existing regulation. But if a band-plan has set aside a frequency for any particular mode and the frequency is not being used, the use by *any* mode would be a “good amateur practice” and an efficient use of the allocated spectrum. Each country has its own rules and regulations for the amateur radio service, including frequency allocations. These operating frequencies and license privileges are strictly under the jurisdiction of the each particular government. The IARU represents no one except the individual participants in its deliberations. It does not regulate any government and is not a regulatory body. Likewise, the ARRL does NOT “the representative of amateurs in the United States.” Readily available information suggests that the ARRL represents about 15 to 20 percent of the U. S. licensed amateur. However, again, I am a long-time member and supporter of the ARRL and am definitely in opposition to what is being proposed. Being actively involved with the digital enabling technologies and rulings that restrict their forthcoming on the Amateur bands, I saw a survey taken by the ARRL of its membership in 1993. That survey illustrated that a vast majority of the recipients opposed the establishment of a mode restriction band plan. How then

can the ARRL claim to be representing the U.S. Amateur community?

I do not understand how the ARRL or any other voluntary organization can be permitted to negotiate U.S. license privileges with the international amateur community, and to deprive U.S. amateurs of their full license privileges. Would this not constitute an abrogation by the Commission of rights granted by Congress and, would it not deprive U.S. Amateur community of a valuable property right without due process of law?

Available space is very limited in the HF spectrum. This is apparent when listening to the 20, 30 and 40 meter bands. SSB and CW take up the majority of the spectrum in these bands. The digital modes are continuing to surface between already established modes of operation. They, in my opinion and in the opinion of much of the ARRL staff, will promote the future of Amateur Radio with the new technologies that are surfacing daily. Since these digital modes have become established they have expanded gradually, as new and enabling technologies become available. Most of these digital modes are in a space that was traditionally used by the original Packet and RTTY modes. Frequencies near the edges of these expanding digital mode operations continue to be shared by other modes. The use of H.F packet is almost extinct as new more robust and narrower spectrum using modes surface. The use of the computer and Digital Signal Processing (DSP), along with other new technologies have kept the Amateur up with the computer age. It is safe to assume that there will continue to be a gradual expansion of these digital modes as the younger computer generation becomes involved with Amateur Radio. Although there is recent

improvements, the ARRL is still not current in its definition of how these digital technologies are defined and used. Their band plan only lists "packet" as *the* digital mode. It is safe to say that no Board member of the ARRL is actively pursuing these newer enabling technologies and this is the reason for the absence of the mention the newer modes. This is just one example of why a static band plan is not a wise choice, regardless of the motive of the ARRL

It is a rule that one amateur station must not willingly or knowingly interfere with a contact already in progress regardless of the mode of operation or the perceived importance of the communications in progress. It is also a rule that no station or group of stations "own" a frequency. On HF and, especially on VHF/UHF with the repeater, the use of voluntary sub-bands with various classes of operation gravitating to specific locations is largely self-regulating. A station occupying a frequency is not deliberately driven off the frequency by a station operating a similar or different mode. As greater numbers of amateurs use a particular mode that part of the band becomes recognized informally as a mode-specific sub-band. This is especially true of the digital modes as new and enabling technologies replace older, less used wider spectrum protocols. RTTY was updated by Amtor which was updated by Pactor I which was updated by Clover which was updated by Pactor II, etc. The point is that these voluntary groupings which include much more than just the digital segment examples are dynamic in their gradual movement and are reflective of what technology is prevalent at the time. If a mode is new, it had a place to go. Regardless, the same rule applies, if the current frequency is being used, do not attempt to use it. Otherwise, it is available. This methodology has proven very

effective and very efficient, especially with the voluntary groupings. Such dynamic groupings or volunteer band planning reflects current demand. To allow the prejudice of any organization to dictate its view of what constitutes "a voluntary, accepted band plan" and then attempt to officially enforce it, is ludicrous.

Therefore, the foregoing considered, I, Steve Waterman, a currently licensed Amateur Radio operator, respectfully requests that the Request for Declaratory Ruling by the ARRL be reject in its entirety.

Respectfully submitted,

A handwritten signature in black ink that reads "Steve Waterman". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

Steve Waterman, K4CJX
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Nashville, TN 37215

May 12, 1998