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WILLIAM F. HAMMETT, P.E.
DANE E. ERICKSEN, P.E.
GERHARD J. STRAUB, P.E.
STANLEY SALEK, P.E.
ROBERT D. WELLER, P.E.
DANIEL G.P. MANSERGH
MARK D. NEUMANN
Consultants to the Firm
ROBERT L. HAMMETT, P.E.
EDWARD EDISON, P.E.

BY NEXT BUSINESS DAY

May 20, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Ms. Salas:

Enclosed is an original and nine copies of comments of the Hammett & Edison Radio Club on RM-9259, a Request for Declaratory Ruling with regard to Compliance with Applicable Voluntary Band Plans in the Amateur Radio Service, filed by the American Radio Relay League. We respectfully request that these timely filed comments be entered into the record.

Please address any questions to the undersigned.

Sincerely,

Gerhard J. Straub

dh

Enclosures (10)

cc: Christopher D. Imlay, Esq. (w/ encl.) - BY FACSIMILE 202/686-7797
Mr. Bradley Wyatt (w/ encl.)

e-mail: gstraub@h-e.com
US Mail: Box 280068 • San Francisco, California 94128
Delivery: 18506 Sonoma Highway (temporary) • Sonoma, California 95476
Telephone: 707/996-5200 San Francisco • 707/996-5280 Facsimile • 202/396-5200 D.C.

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MAY 21 1998

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

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

To: The Commission

Comments of the Hammett & Edison Radio Club

The Hammett & Edison Radio Club ("HERC") is an organization of Amateur Radio Operators employed by or associated with the consulting engineering firm of Hammett & Edison, Inc. Some members of HERC are also members of the American Radio Relay League, Inc. ("ARRL"). HERC operates club station W6PE, including a full-time digital packet mailbox and digipeater. In general, HERC supports the efforts of the ARRL to protect the interests of Amateur Radio operators, including the efforts aimed at interference reduction. However, for the reasons detailed below, HERC opposes this ARRL request.

The ARRL has filed a Request for Declaratory Ruling, RM-9259, with the Commission. This request states that "(1) Amateur operators should be familiar with, and should abide by, the voluntary band plans that are applicable to the frequency bands in which they operate; and (2) due to widespread acceptance of those band plans, any amateur who selects a station transmitting frequency not in harmony with those plans is not operating in accord with good amateur practice." HERC opposes this request as it is vague, produces no benefit to the Amateur community, is a de facto rule making that would place tighter restrictions than those specified in Part

97 of the Commission's Rules on frequency, mode, and type of operations allowed for Amateur stations, and would allow the ARRL or any other organization to change band plans at will with no opportunity for public comment. Violating any "voluntary" band plan would then be citable under Section 97.101(a) of the FCC Rules, since violating a "voluntary" band plan would not be operating in accordance with "good amateur practice."

WHICH BAND PLAN?

The ARRL wishes to mandate that Amateurs follow "voluntary" band plans. The ARRL acknowledges that there are national band plans established by them, as well as regional and local band plans established by others. If compliance with such band plans is mandated under "good amateur practice," which band plan takes precedence when various band plans conflict? For example, one of our members, while relocating to another state, was engaged in voice communication with another Amateur in a different automobile on 146.58 MHz, a national FM simplex frequency as specified in the ARRL band plan. Upon nearing northern California, they began to experience interference from packet operations on the same frequency, which would appear to be in violation of the ARRL national band plan. Later it was discovered that the local packet organization, the Northern Californial Packet Association ("NCPA"), had listed the simplex frequency for use by the packet DX spotting network, in apparent conflict with the ARRL national band plan.

We asked a member of the ARRL Board of Directors for his opinion on which band plan would apply in this situation. This query would, under this ARRL request, determine which stations were not operating in accordance with "good amateur practice." His reply was that the "NCPA Band Plan would supercede the national so

you would be OK operating within the NCPA plan assuming that it is in agreement with the 'recognized frequency coordinator' NARCC in this case. NCPA is not in that category."¹ So it is *still* unclear which band plan dominates and which of these stations would be subject to citation for operation not in accordance with "good amateur practice" if the request of the ARRL were to be granted.

In addition to "band plans," the ARRL also prepares a "Considerate Operator's Guide," which primarily addresses HF operations. In this guide some HF band segments are specified for certain types of operation, such as "DX window," in which U.S. stations are supposed to avoid transmission. Under the ARRL request, domestic communications between Amateurs would be prohibited in certain portions of the Amateur bands. The guide also lists frequencies specifically to be protected for a system of propagation beacons established by specific organizations and frequencies specifically to be used for various modes of operation, such as RTTY, SSTV, HF propagation beacons, *etc.* Granting this ARRL request would cast these uses in concrete, effectively allocating these listed frequencies to those very specific modes of operation, or conversely, prohibiting those modes outside of the "Considerate Operator's Guide" frequency listing even though the modes and frequencies are authorized for such operation in Part 97. This is certainly a detriment to the experimental nature of the Amateur Radio Service.

These "band plans" go well beyond the issue of repeater coordination in which the Commission has previously supported voluntary band plans. Such repeater coordination and the associated band plans apply to only one class of Amateur station in limited segments of certain Amateur bands. This ARRL request applies to all Amateurs on all frequencies and all modes. In fact, the ARRL, in its request, has

¹ "NARCC" is the Northern Amateur Relay Council of California, Inc.

quoted the FCC from the repeater coordination proceeding as stating that “Rule-mandated band plans may result in inflexibility, increased enforcement burdens and greater regulatory burdens.”² This request of the ARRL would essentially transform the existing “voluntary” band plans into ambiguous “rule-mandated” band plans.

HOW ARE BAND PLANS DISSEMINATED?

If “voluntary” band plans are to have the force of FCC Rules behind them, as they would if the ARRL request is granted, then how are Amateurs to be made aware of which band plans to follow? In paragraph 15 of the ARRL request to the Commission, five sources of ARRL band plans and the “Considerate Operator’s Guide” are listed. All five are copyrighted publications of the ARRL. Even if the ARRL plans are made available to all Amateurs at no cost, what about “regional” or “local” band plans? Referring to the example of the travelling Amateurs discussed earlier, how were they to know of the NCPA band plan when travelling into a new area? Where does the jurisdiction of the national plan end and the local plan begin?

HOW ARE BAND PLANS DEVELOPED?

This request of the ARRL essentially turns Amateur frequency allocation for all bands over to ANY Amateur organization. While the ARRL establishes voluntary national plans, its request states that there may be regional or local plans as well. We asked a member of the ARRL Board of Directors to provide us with a copy of the ARRL procedures for establishing a band plan. He was not able to provide a copy of any such procedures. He did say that “the basic work was done by staff, then brought to

² *Amendment of Part 97 of the Commission’s Rules Concerning Frequency Coordination of Repeaters in the Amateur Radio Service*, Report and Order, 60 RR.2d 204, 209 ¶ 27 (1986).

the Board or a committee of the Board. The last adoption of a band plan was done by a motion at a Board meeting.” As a result, we conclude that there is no specific procedure for establishing even national band plans, let alone regional or local ones. This means that band plans may be established by the ARRL or any other organization with no notice to the national Amateur community and no opportunity to comment on those band plans by the Amateurs who will be affected. If this ARRL request is granted, then band plans established without public notice or comment will have the force of an FCC Rule under the general heading of “good amateur practice” as specified in Section 97.101(a) of the FCC Rules. This fundamentally violates the Administrative Procedures Act, which the FCC is bound to follow to allow all parties to comment on proposed rules. This ARRL request, in effect, takes the administration of the Amateur frequencies away from the FCC and the public and places that authority in the hands of any number of Amateur Radio organizations and allows the usage of the Amateur frequencies to be changed at the will of those private organizations.

SUMMARY

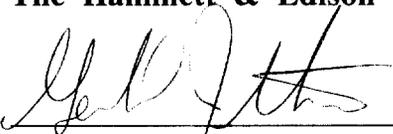
HERC supports the ARRL efforts in promoting good amateur practice and empathizes with the ARRL’s frustration with the lack of courtesy and good operating practices in some portions of the Amateur bands. In fact, if the ARRL wishes to propose a series of band plans in a Petition for Rule Making, so that all interested Amateurs may comment on the proposed band plans and so that the final binding band plans are available to all in Part 97, it is likely HERC would not oppose the proposal. It is not the concept of band plans that HERC is opposing, but changing “voluntary” band plans to “mandatory” band plans under the guise of “good amateur practice” without the opportunity for all Amateurs to comment on the “voluntary” band plans in an open

proceeding. This ARRL request is in no way similar to the declaratory ruling regarding repeater station coordination. That ruling pertains to one type of operation by one type of station. This ARRL request affects the operation of every Amateur station on every Amateur frequency, resulting in inflexibility, increased enforcement burdens, and greater regulatory burdens. As a result, we respectfully request that the ARRL Request for Declaratory Ruling, RM-9259, be denied.

Respectfully submitted,

The Hammett & Edison Radio Club

By:



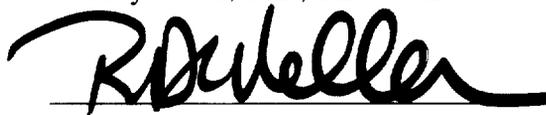
Gerhard J. Straub, P.E., K6XH



Dane E. Ericksen, P.E., N6AJY



Stanley Salek, P.E., KD6CVL



Robert D. Weller, P.E., N6NE



Daniel G.P. Mansergh, KF6PAQ

The Hammett & Edison Radio Club
c/o Hammett & Edison, Inc.
P.O. Box 280068
San Francisco, California 94128
707/996-5200

May 19, 1998