

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

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COMMENTS IN OPPOSITION

By:
 Tom Blackwell, N5GAR
 P.O. Box 25403
 Dallas, Texas 75225
 Telephone: (214) 361-7531
 Email: tom.blackwell@why.net

May 20, 1998

SUMMARY

These comments ask the FCC to reject the Request for Declaratory Ruling in RM-9259, and to enforce its rules, particularly § 97.3(a)(21).

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INTRODUCTION

I am a Life Member of the American Radio Relay League ("ARRL"), and currently serve in the local "North Texas Section" as State Government Liaison. In the course of my experience as an amateur licensee I have been on the front lines of observing certain serious radio interference situations, some of which is malicious, which violate the FCC Rules, and sometimes, our State Laws.¹ Some of this involves the refusal of some amateurs to obey the FCC Rule defining (and which limit the scope of) the function of a "Frequency Coordinator,"² and to recognize other FCC Rules which grant rights and privileges to each licensee as to the emission types that will be transmitted and received on each band. I served as an elected member of the corporate board of the Texas VHF-FM Society, Inc. from 1991 to 1993. I am also a Life Member of that organization. I was an original petitioner in RM-7649, PR Docket 93-85, which established § 97.205(g) and other Rules.³ I hold an Advanced Class amateur license, and have personal experience transmitting on "coordinated" frequencies since 1982. I am not an attorney.

¹ having application to § 97.113(a)(4) "... communications intended to facilitate a criminal act; ..."

² § 97.3 (a) (21)

³ I filed this after the ARRL's Petition for Rule Making was "withdrawn." Subsequently, FCC Attorney Maurice DuPont advised me that the ARRL's petition would have violated the Communications Act.

I am among what appears to be a large number of ARRL members who were not consulted prior to the filing of the request in RM-9259. This proposal is improvident, embarrassing, and would establish consequences that could not be intended by the ARRL membership as a whole. While the problem has been explained to the corporate Director of the ARRL who represents its members in Texas and Oklahoma, and to certain members of the ARRL staff at Newington, Connecticut, these consequences are not explained or disclosed in the petition. In the course of this, the responsible ARRL officials have even decided not to answer mail from members.

I call upon the ARRL to immediately withdraw this inappropriate petition, for the FCC to wholly reject it at this time, and allow the valuable future time of the FCC staff to be allocated for other urgent issues.

I support the decision of other individuals and groups who are opposing the inappropriate and improvident position of the ARRL incumbents who submitted this petition. I understand the opposition includes a number of my fellow ARRL members, who were apparently, like me, left out of the deliberations, and denied the courtesy of appropriate political representation within our organization.⁴ At

⁴ **At one point, the ARRL incumbents held a secret meeting at the D/FW Airport Marriott Hotel in Irving, Texas, on a date designated as a "Field Day." Once the secret meeting was concluded, these incumbents did not take part in any of the "official" ARRL "Field Day" activities taking place only a short distance away, where ARRL members were present. Local ARRL "section" officials**

this time I understand that various reasons for opposition to this proposal have been presented by: The Tucson Packet Radio Society, The Midwest Specrum Management Alliance, No Code International, Greg Jones, Bill Wells, Wayne Zehner, Fred Maia, Henry Ruh, and others.

ALL I ASK: OBEY THE FCC RULES

Amateurs licensed by the Commission ask one essential task of the entities who perform "frequency coordination." It is that they obey the FCC Rules. Some "coordinators" refuse to do that. Some even actively advocate violating these Rules.

The Commission has defined "Frequency Coordinator" in §97.3(a)(21) as:

learned about the meeting from an "ARRL Letter" published on a later date. The ARRL Director who currently reports to members in Texas and Oklahoma tells me he takes exception to my characterization of this as a "secret" meeting, and says that the minutes are available for purchase. I asked him to send me a copy of these minutes, and bill me for the expense. No minutes have been produced, and I remain convinced this can only be characterized as a "secret" meeting. Such secret meetings are unfortunate, as the expense for same could have been used by the ARRL officials who have collected our dues money, to hear from members who are concerned with these urgent issues, and settle them, rather than force political divisions and responses such as this to the FCC. It is time for certain changes in the administration of the ARRL. Some of the same ARRL officials have refused to answer their mail from members. It is my personal belief that the ARRL will continue long beyond the terms of office of these incumbents.

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.*

The emphasis is mine. The refusal of some entities who claim to perform the role of "Frequency Coordinator" to "*avoid or minimize [the] potential interference*" disqualifies them from this role.⁵

Yet all we - the public - ask is that those who call themselves "Frequency Coordinators" obey the FCC Rules.⁶

The ARRL should never have associated with entities that refuse to obey the FCC Rules.

BAND PLANS

In order to "*avoid or minimize potential interference,*" it is necessary for the "coordinator" to adopt or otherwise write down a "band plan." The plan must, at

⁵ Yet those violating this rule continue to use the title. Have they used this title in comments to the FCC in this proceeding?

⁶ It's not that hard to do. The scope of a "Frequency Coordinator" is appropriately limited in the Rules by the phrase "*in order to avoid or minimize potential interference.*"

the outset, accommodate all the emission types that will be transmitted and received on each band. Those emission types have been determined by the FCC, and published in its Rules.⁷ Some of these emission types, by necessity, involve the usage of different amounts of bandwidth. Many are not compatible with one another. Yet each one is a 'given' in the equation that must be accommodated in such a "band plan." When a band plan accommodates all the FCC designated emission types for the band, it can⁸ be said to be 'FCC compatible.' By using an FCC compatible band plan, a person can qualify, per § 97.3(a)(21) to be a "frequency coordinator."

The ARRL publishes an 'FCC compatible' band plan in its *Rule Book*, for each band we are licensed to transmit upon. This is not the *only* possible plan that can be 'FCC compatible.' It is one example that will work, and which many, if not most, amateurs accept. This acceptance is because of our trust and faith in the technical expertise of the ARRL, and usually careful decision making which is conducted in public and reflected in the published Minutes of its Board Meetings⁹ and otherwise in important publications such as the *Rule Book*.¹⁰

⁷ A licensee's working knowledge of these emission types is considered important. To obtain an amateur license, each person is responsible for answering questions demonstrating this knowledge.

⁸ for the purpose of my presentation

⁹ Minutes of ARRL Board Meetings are published in its *QST* Magazine.

¹⁰ Regretably, with this petition, that trust and faith is being shaken at its foundation.

LOCAL BAND PLANS

Band plans which are not 'FCC compatible' result in interference. Regretably, some local entities calling themselves 'coordinators' purport to operate with non-compatible "local" band plans. Negligently or intentionally, the ARRL has associated with, and continues to associate with, those entities. It has made a serious error in judgment, on behalf of its members, including the undersigned.

The petition placed before you asks the Commission to declare that individual licensees who do not transmit in observation of "local" band plans, will be in violation of the FCC Rules, and the terms of their federal licenses, because of the requirement that amateurs observe "good amateur practice."¹¹

The immediate, continuing problem is that some who call themselves "frequency coordinators" refuse to obey § 97.3(a)(21), and set out to use the 'coordination' process to discourage or prohibit the use of certain emission types, designated elsewhere in the Rules. Inappropriately, the ARRL has recognized and / or associated with such "frequency coordinators," at least to the extent that ARRL publishes their listings in the "ARRL Repeater Directory."¹² See also the

¹¹ § 97.101(a)

¹² reportedly the most popular publication of the League.

statement from the Repeater Directory, reproduced on page 10 of the ARRL's petition.

Incumbents at the ARRL have submitted this petition without performing a proper audit of these "frequency coordinators" to be certain they are obeying the FCC Rules, and recognizing all the rights and privileges of each individual licensee that have been designated by the Commission.

**HOW FREQUENCY COORDINATION
AND "LOCAL BAND PLANNING" ARE PERFORMED**

The ARRL has never performed "frequency coordination" of repeaters or auxiliaries, either by its Newington, Ct. office, or through its local "Field Organization." It has chosen to leave this function to other private sector entities, which organize on their own initiative.

Coordination is performed by political organizations, usually active within a geographic area, following the FCC requirement that there be 'recognition'¹³ by eligible amateurs. These are usually corporate entities, having been issued

¹³ § 97.3(a)(21) "recognized in a local or regional area by amateur operators..."

corporate charters pursuant to State Laws. They usually elect a Board of Directors from among their paid members.

These organizations, to their peril, are subject to political take-overs by those with special interests, who see them as an opportunity to secure selfish benefits. Where this violates the FCC Rules, results in interference, or reduces the rights or privileges of others, responsible licensees must object.

Competition with an existing "coordinator" is not practical for the purpose of eliminating such interference. Competing coordinators have been able to exist in full compliance with the FCC Rules, in various locations, for other purposes. However, adding a competing coordinator to a local political equation will not stop an errant "coordinator" from acting to cause, rather than "avoid or minimize potential interference."¹⁴

¹⁴ The incumbent ARRL Director who reports to us in Texas and Oklahoma asked me why I had not formed a competing coordination council. I answered: "Suppose we established a competing coordination council, which obeyed the FCC Rules. While we would refuse to coordinate transmitters on conflicting frequencies - all this would not stop those who are now interfering with ATV (such as on 421.250 - a frequency listed in the ARRL's suggested FCC-compatible band plan in the Rule Book). It would only (slightly) change their legal status, in the event of an FCC complaint. With this, the FCC would treat these conflicts in the same way as if they were not coordinated at all. So we would just be back to 'square one.' In other words, on reading 97.205(c), if there are two competing coordinators, the status of a conflicting 'coordination' by either of them is the same as if neither transmitter were 'coordinated.' The only protection of 205(c) is where one transmitter is 'coordinated' and the other is not. So, if I announce that I am a competing coordinator, and refuse to 'coordinate' in violation of the FCC's definition of a 'coordinator,' ('in order to avoid or minimize potential

Problems arise, for example, when persons with special interests in one emission type proceed to take over a local coordination council. They are known for using that platform to crowd out the spectrum with one emission type, so that it becomes impossible to effectively use other FCC designated emission types.

I attended a meeting of the Texas VHF-FM Society, where a speaker who was attempting to organize coordination councils, nationwide, openly advocated the use of the coordination process to discourage the use of ATV repeaters on the 420 - 450 MHz. band. I feel this is not appropriate, and where such a "coordination" policy exists, the FCC should investigate and address it as a matter of enforcement.

EXAMPLES OF NON-FCC COMPATIBLE BAND PLANS AND WARS of INTERFERING EMISSION TYPES

In Texas, one amateur radio organization has taken over the coordination council. It is a Lilly white, closed, private, corporate club, which operates private, closed repeaters and auxiliary stations.¹⁵ It insists on using its own, non-FCC

interference"), this action would not cause any interfering narrow band auxiliary to be removed from the air."

¹⁵ **Some of the auxiliary stations are connected to the transmitters of various additional repeaters which are not involved in the ongoing two-way**

compatible band plan, and purports to "coordinate" narrow band FM auxiliary stations on top of certain "coordinated" repeaters. These 'coordinated' auxiliaries are not published in the ARRL Repeater Directory, while the repeaters are routinely listed.¹⁶

There are many other frequencies and bands that are unused and available for these narrow band FM auxiliaries, where no interference involving the repeaters or auxiliaries would occur.¹⁷ Yet, in a bully boy style, there seems to be an insistence on maintaining the interference, and purporting to legitimize it.

Amateur Television ("ATV") is among the uses of the airwaves licensed by the FCC each time an amateur license¹⁸ is issued to a person or club. For example, ATV emission types, for simplex and repeaters,¹⁹ are licensed to amateurs on the 420 - 450 MHz. band.²⁰ It is a 'given' in the equation that ATV will be transmitted

communication. Many of their transmissions throughout the day are one-way.

¹⁶ While 'coordinating' narrow band FM auxiliary stations to itself, the organization that controls the Texas coordination council has seen to it that other licensees are sometimes given similar treatment for the assignment of frequencies for their auxiliary stations, which also results in interference. This is done as if to legitimize the inappropriate, non-FCC compatible band plan.

¹⁷ It appears that the closed, corporate club that controls the coordination council prefers certain 420 MHz. frequencies, as they have no desire to buy new crystals or re-tune their cavities.

¹⁸ of appropriate class

¹⁹ which operate entirely "in band" or which, by an election by the licensee, to receive signals on one band and transmit them on another

²⁰ I am providing an attachment demonstrating another example on the 23 cm. band.

on this band. It requires, of course, a different specification as to the bandwidth required, than the other emission types such as 'narrow band FM.'

A band plan is required, whether national or local, that will accommodate all the emission types in a manner that will "avoid or minimize potential interference."

Since the organization that controls the Texas coordination council has refused to do that, for its own particular benefit, the result has been interference.

The ARRL proposal before the FCC today is improvident, as it would require FCC licensed amateurs to follow such inappropriate local band plans, designed to revoke rights and privileges earned with the federal license. It would serve to reduce the rights of amateurs.

Amateurs who care about the inappropriate use of the coordination process in Texas tried to fix the problem, by changing the By-Laws of the Texas VHF-FM Society, Inc. I served as Chairman of the By-Laws Committee, which held meetings around the State.²¹ A focus of these meetings was the difficulty that was imposed on amateurs who wished to vote in the organization's director elections, by which the status-quo arrangements have been kept in effect. In order to create as much difficulty as possible for amateurs to be represented in

²¹ One of the meetings was held at a House Committee Room in the new underground wing of our State Capitol in Austin.

this process, the General Meetings where voting for corporate directors is allowed are scheduled annually on a Sunday Morning in August in Austin, Texas. For reasons that would require some detailed explanation, it is convenient for members of the closed, corporate club that controls the council to attend at that time. Others (even the local Austin area amateurs who desire to attend church services) find this time and place inconvenient, and are absent.²² So one of the goals of our committee was to make voting convenient. To accomplish this, however, we had to obtain an affirmative vote from those who enjoy the Sunday Morning Austin meeting arrangement. While the final vote was close,²³ this effort was not successful.

There was another credible attempt at correcting the interference problem caused by narrow band FM auxiliaries for viewers of the ATV repeaters in Texas, by "NTSC," an ATV club in North Texas. This club produced a detailed plan, demonstrating how some narrow band FM auxiliaries could be placed within the bandwidth required for existence of ATV on the 420 - 450 MHz. band, where interference would be avoided. After much work on this proposal, which was complete with color charts, it was presented to the Board of the Texas VHF-FM Society, and its various appointed officials. This good faith effort at resolving the interference was summarily ignored. It seems it would be too inconvenient for

²² **This is all in contrast to the local election procedures of the ARRL, where a convenient, mail-in ballot is used.**

²³ **and inaccurately reported in the minutes of the organization**

those who have politicized this process to go change a few crystals and re-tune a few cavities. The issues remain largely unresolved.²⁴

There are other ways to resolve the issues that are unsettled at the Texas VHF-FM Society. There are repeater trustees who are now saying that if they ever have a problem, they will not go attend any meetings or otherwise entertain the organization. Instead, they say they will sue.

I understand that NTSC members demonstrated their "coordinated" ATV repeater to United States Senator Phill Gramm. While he was viewing the screen, displaying a picture received on 421.250 MHz., interference from a "coordinated" narrow band FM source in Dallas reportedly obliterated the signal. Gramm reportedly responded that it should be the government, not some private sector entity, that should perform this kind of coordination, so as to prohibit the interference.²⁵

It is extraordinary that at a time when the faith of ARRL members and amateurs generally has been shaken with the coordination process in the ways described

²⁴ **I believe these matters will be unresolved, until these simple changes are implemented.**

²⁵ **This kind of response from Senator Gramm is significant, because of his long standing use of "The Dickey Flatt Test." This political test is one of whether tax money is taken from the pocket of a sole proprietor owner of a print shop, Dickey Flatt, and used by the government. Apparently, this kind of need meets that test with this "conservative" Republican Senator.**

herein, that the ARRL would go to the FCC with such a highly political proposal. It is even more extraordinary, when viewed as a request for "declaratory ruling," where it was intended that comments from the public would not be scheduled through a 'rule making' process.

MY INTEREST

I want to receive ATV signals, particularly those on 421.250 MHz., without being subjected to interference caused by someone who purports to be a "coordinator." I have an investment of money in my equipment, as well as in my life membership at the ARRL, and my life membership at the Texas VHF-FM Society. I want to see these organizations provide an appropriate respect for the people who have paid money to become members, on the assumption that they would obey the FCC Rules. When these organizations make presentations to the FCC, on my behalf, I want their positions presented to the FCC to be credible and appropriate.

I have an interest that the FCC should not be misled to believe that coordination is being conducted in accordance with § 97.3(a)(21) when it is not. It would not be possible for this rule to be obeyed, and for the kind of interference to ever exist that I have observed, and that Senator Gramm has reportedly observed.

I am concerned about the association these organizations have with "NFCC, Inc.," because of the statements made by officials of that organization. I understand that other commenters have documented some of those statements.²⁶

I want "coordination" to be conducted with fairness, with a level playing field, and with a policy of "first come, first served," and where personal problems of a "coordinator" do not become my problem, as well. Where a "coordinator" who was not doing a proper job is replaced, his bad old mistakes, and his actions of personal privilege and advantage must be corrected, in order for the organization to have the respect or recognition of other licensees.

Coordination councils should conduct themselves in a manner that elicits respect from fellow amateurs. I have a concern that some of those who call themselves "frequency coordinators" in Texas refuse to obey the FCC Rules, or are otherwise involved in some self-discrediting personal controversy, that impacts their viability.

ATTACHMENTS

Attached are documents that further demonstrate the problem with the ARRL petition.

²⁶ See the attachments.

These consist of internet web pages I have previously published, which are available at:

<http://www.why.net/home/tom.blackwell/>

These web pages demonstrate the issue of coordinator caused interference and improper local band plans, which violate the FCC Rules. Incumbent ARRL Director Haynie has admitted to receiving this.²⁷

I would ask that the Commission provide particular consideration to the following passage:

DON'T TRANSMIT ATV ON THIS BAND!

One of the private sector "coordinators" informed the purchaser of a 23 cm. FM ATV transmitter from the Houston Amateur Television Society ("HATS") that he could not use it in California. It seems a "coordinator" there used an invalid, non-FCC compatible band plan that was intended to totally exclude modes that are specified as rights and privileges of every amateur, conveyed each time the FCC issues an amateur license.

²⁷ **Mr. Haynie told a meeting of the Garland Amateur Radio Club, Garland, Texas, that he had read these web pages.**

The coordinator posted this on the Internet:

I ask you not to sell your kits to anyone else here - I dont sell HFT in California - because of the high band occupancy there isn't a wide enough segment of frequencies here that a FM ATV transmitter could be put on that would not interfere with other coordinated users. ... and suggested he sell the completed kit back to some one in your area so as not to be out the money. I never "bagged" on your transmitter, in fact I have mentioned it to those that call and want to build a kit instead of the ready made HFT. What I did say was that he might have some mad FM voice people string him up by his coax if he used it. ...

If the band plan had respected the rights/privileges granted by the FCC to individuals with its issuance of licenses, this situation would have never arisen. With that, it seems the band plan, the coordinator and others acting in concert have made the use of an entire FCC licensed mode on a band unworkable, inadvisable and impossible.

It seems it is not the role of the "coordinator" to determine what modes will be allowed on a band. This is the role of the FCC; certainly not those who want to "play FCC" or serve as "FCC wannabees." (Procedurally, it would be proper to petition the FCC on the matter, asking that certain

modes be eliminated from certain bands. A local coordinator should never have adopted his own non-FCC compatible mode eliminating band plan. Of course such a proposal to the 'real' FCC would have been opposed and defeated.)

I am interested in receiving copies of any other statements from "coordinators", that they refuse to coordinate any particular FCC prescribed mode on a band.

*** * ***

THE ADMINISTRATIVE PROCEDURES ACT

As related above, it would be appropriate for those who want to remove ATV privileges from amateur licenses, to petition the FCC to do this. With such a petition, they would be required to spell out their intentions, demonstrating candor to the Commission.

Under the Administrative Procedures Act, it may be appropriate for the Commission to designate such a petition for comments. I would predict, of

course, that there would be an avalanche of comments in opposition to such a petition, and that the request would not be enacted.²⁸

It is not appropriate, however, for a petition to be presented that would serve to do these same things, such as through a proposed FCC recognition of "local" band plans, which are, on their face, incompatible with the FCC Rules, and which intend to affect the rights of amateurs to transmit and receive certain emission types.²⁹ To the extent that a petition before you demonstrates a lack of candor, responsible licensees must object.

In evaluating this, the Commission should consider the notices concerning the problems with the local band plans, which have been provided to the ARRL. See the copy of my communication to the incumbent ARRL President, which is re-printed in my web page, attached.

GOOD AMATEUR PRACTICE

The entire issue of "good amateur practice" involves a rule which is so vague, it is not possible for licensees to understand exactly what it means, or what,

²⁸ I would also predict that in the course of such a petition, much valuable time of the Commission's staff would be consumed.

²⁹ such as the ATV emission types

exactly, we are required to do. Is there any case law on the subject to guide us?

Is the rule itself unconstitutionally vague?

On May 17, 1998, ARRL Vice President Steven Mendelsohn stated to an assembly at Dayton, Ohio:

We all know what "good operating practice" is, don't we? It's whatever we want it to be at the time.

I believe the above serves as a statement against interest, of the fundamental unfairness of this Rule, and, constructively, of the ARRL's request.

REPRESENTATION BY COUNSEL

No attorney with the law firm of Booth, Freret, Imlay & Tepper, P.C. may suggest or imply that they represent the undersigned, for reasons well known to them.

This law firm is required to make it clear to the Commission, and to anyone else it may encounter with any continued representation of the ARRL, that they do not represent me.

WHAT SHOULD BE DONE, NOW

At this time, the ARRL should select new legal counsel, and assign them the task of auditing those claiming to be "frequency coordinators" with which the ARRL associates. There should be a report on each coordinator, as to whether they obey the FCC Rules, particularly § 97.3(a)(21), and the various other rules designating the use of emission types on bands.³⁰ From this, the leadership of the ARRL can report these facts to the membership, and solicit our recommendations as to what should be done for the FCC Rules to be obeyed, for the benefit of every licensee.

CONCLUSION

As stated above, and for the reasons stated herein, I call upon the ARRL to immediately withdraw this inappropriate petition, for the FCC to wholly reject it at this time, and allow the valuable future time of the FCC staff to be allocated for other urgent issues.

I thank the Commission's staff, and Mr. Bill Cross, for returning my telephone call and arranging for the comment period on the ARRL's "Request for Declaratory Ruling, which I requested."

³⁰ particularly including that use for repeaters and auxiliaries.

Respectfully submitted,

Tom Blackwell

Tom Blackwell
PO Box 25403
Dallas, Texas 75225
(214) 361-7531

May 20, 1998

CERTIFICATE OF SERVICE

On this date, I mailed a copy of this document (described as a Statement of Opposition to RM-9259) to Christopher D. Imlay, of the Law Firm of BOOTH, FRERET, IMLAY & TEPPER, P.C., 5101 Wisconsin Avenue, N.W., Suite 307, Washington, DC 20016

Tom Blackwell 5-21-98

Tom Blackwell, N5GAR