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Before the
FEDERAL COMMUNICATIONS COMMISSION

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Washington, D.C. 20554

In the Matter of)	
)	
The American Radio Relay League's)	
"REQUEST FOR DECLARATORY RULING")	RM-9259
Titled "Compliance with Applicable Voluntary Band)	
Plans in the Amateur Radio Service")	

To: The Chief, Private Wireless Division
Federal Communications Commission

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Harold Furchgott-Roth
Commissioner Gloria Tristani

REPLY COMMENTS OF CARL R. STEVENSON, WA6VSE

I am writing in response to the Comments of the American Radio Relay League (ARRL), whose "Request for Declaratory Ruling" precipitated the opening of this docket item by the Commission.

As stated in my initial Comments, I have been a licensed amateur operator since 1975 and have been employed as an RF engineer and consultant for over 25 years. I am a member of the ARRL and several other amateur radio organizations, as well as various professional organizations and societies related to radio and electronics. I am an interested party in this Proceeding.

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I. INTRODUCTION

1. In its comments in this proceeding, the ARRL makes a number of assertions that deserve rebuttal. In the following comments, I will address them one by one and show that the arguments put forth by the ARRL are not compelling and that their request should not be granted.

1. II. THE ARRL'S RESPONSE TO THE COMMISSION'S ACTIONS TO DATE IN THIS MATTER ARE PRESUMPTUOUS AND EVIDENCE AN INAPPROPRIATE ARROGANCE ON ITS PART.

1. From the very first paragraph¹ and repeatedly throughout its comments, the ARRL presumes to chastise the Commission for its treatment of this matter because the Commission saw fit to treat the ARRL's Request for Declaratory Ruling as a Petition for Rulemaking, so that the matter might receive the widespread exposure and public comment that it deserves.

2. The ARRL, by means of innuendo and insinuation, also challenges the validity and merit of the overwhelming body of comments filed by interested parties opposing their request.²

3. While one may understand the ARRL's frustration at not having gotten its way, it is difficult to understand how it can believe that acting like a spoiled child whose parents have finally set limits will forward its case.

¹ In its comments, the ARRL declares that the Commission's treatment of its Request for Declaratory Ruling has been "extraordinary" and that "The Commission has, to date, procedurally mishandled this request."

² The ARRL states that "... the comments that have been filed to date reflect significant misunderstanding of the League's intent, and the context of the Request." And that "... it is unclear that the comments filed to date reflect even a cursory reading of the proposal itself."

4. As I stated in my original comments, the Commission is to be highly commended for having the good judgement and integrity to treat this matter in exactly this manner so that it may receive the broad public attention and comment that it deserves.

5. If any party in this matter should be chastised, it should be the ARRL for its blatant attempt to make an “end run” around such public scrutiny and participation. Despite its representations to the contrary, The ARRL’s reactions to the Commission’s action, as expressed in its comments only serve to reinforce the inescapable impression that it sought to avoid such public scrutiny and comment to the maximum possible extent.

III. THE ARRL’S “COMMENTS” IN THIS PROCEEDING ARE, IN FACT, “REPLY COMMENTS,” AND SHOULD BE TREATED AS SUCH BY THE COMMISSION.

6. It is quite evident from even a cursory reading of the ARRL’s recently-filed “Comments” that they are, in fact, “Reply Comments,” since they provide no further substantive evidence in support of their original filing (their “Request for Declaratory Ruling”). Instead, the entire thrust of the ARRL’s “Comments” is to criticize the Commission’s handling of this matter and to refute the substantial body of comments filed in opposition to their request by questioning their objectivity and validity.

7. In light of this, it would seem appropriate for the Commission to treat this most recent filing by the ARRL for what it is: their Reply Comments, and preclude the ARRL from employing such “double-dipping” tactics.

8. This view is consistent with the concerns raised by Commissioner Tristani in her April 2, 1998 "Partial Dissent" in GC Docket No. 97-113, where she wisely raised concerns that the later filing deadline for comments afforded to electronic filers under the Report and Order in that proceeding would afford sophisticated electronic filers the opportunity of incorporating responses to the comments of others into their "Comments," thus giving such filers an additional reply opportunity not available to the general public.

9. While the ARRL, having retained counsel in Washington, may not have filed its "Comments" electronically, it is clear that their "Comments" are designed to "reply" to the body of opposing comments filed before the close of the public comment period (to which the ARRL's Washington council would have had ready access).

10. There is enough of a parallel between this situation and the concerns raised by Commissioner Tristani to justify that the Commission deem the ARRL's recently-filed "Comments" to be, in fact, their "Reply Comments" and disallow the ARRL the opportunity to enjoy a further reply opportunity that others are not afforded.

IV. IN SPITE OF THE ARRL'S ASSERTIONS TO THE CONTRARY, THE COMMISSION DID NOT "MISIDENTIFY" THE ARRL'S REQUEST.

11. In the second section of its comments, the ARRL attempts to make the case that the Commission "misidentified" its filing and that it "... was not, and could not have been reasonably construed to be a Petition for Rulemaking." At this point, it seems humanly impossible to avoid recalling the old saw, "If it walks like a duck, quacks like a duck, ..."

12. *Of course*, the ARRL's filing was *labeled* as a "Request for Declaratory Ruling" ... treatment in that form would have bypassed much, if not all, opportunity for public scrutiny and comment. However, the fact of the matter is that the ruling sought by the ARRL would, in effect, *extend* the Commission's rules to broadly equate non-compliance with "voluntary band plans" with failing to follow "good amateur practice," which, would, in a round-about way, make such non-compliance a violation of the Commission's rules.

13. The ARRL cannot "have it both ways" either such "band plans" are merely unofficial recommendations, adherence thereto is voluntary, and flexibility of operation is inherent therein, or they carry the force of regulation and adherence thereto is mandatory.

14. By extension, if such "band plans" are not voluntary, or if operating outside of what is provided for in the band plan is a violation of the Commission's rules, then the "band plans" are, in fact, obligatory statements of what is and is not permissible. This appears to be the outcome which the ARRL actually seeks.

15. The ARRL purports to seek merely "an interpretation" of the Section 97.101(a) of the Commission's rules, which reads as follows

97.101 General standards

(a.) In all respects not specifically covered by FCC Rules each amateur station must be operated in accordance with good engineering and good amateur practice.

16. The ARRL's attempt to persuade the Commission to extend the meaning of this rather vague reference to "good amateur practice" in the manner requested can *only* be interpreted as a move to convert the voluntary nature of band plans to a mandatory requirement.

17. Since the "band plans" referred to by the ARRL prescribe recommended limitations for mode usage and operational modalities that are considerably more restrictive than the limitations currently imposed by the Commission's Rules, applying the "good amateur practice" catch-all to make non-conformance with such "band plans" a violation of the Commission's Rules is, in effect, a *considerable* extension of the restrictions imposed by the Commission's Rules with respect to what modes and types of operation are permissible in what portions of the various amateur bands.

18. If such sweeping extensions of the Commission's Rules do not merit treatment as a Petition for Rulemaking, it is unclear what the ARRL believes *would* merit such treatment. The Commission chose to treat this matter in an entirely appropriate context and should pay no attention to the unwarranted criticism leveled by the ARRL.

V. THE ARRL MISREPRESENTS THE NATURE OF "VOLUNTARY BAND PLANS" AS WELL AS THE MOST COMMON ORIGINS THEREOF.

19. In paragraph 5 of its comments, the ARRL asserts that "These plans are developed not by any League-dictated methods, nor are they the "League's plans ..."

20. One need only visit the ARRL's internet web site at <http://www.arrl.org> to see for one's self that the ARRL *does indeed* formulate "national band plans" through various ARRL-appointed and controlled committees and "approves" them by its Board of Directors.

21. While it is true that there are some regionally-developed plans that differ from the ARRL's "national band plans," they are the exception rather than the norm and have come about because the "national band plans" developed under the auspices of, and approved by, the ARRL were perceived as not meeting the needs of the amateur community in various locales.

22 .Unfortunately, even these regionally-developed band plans generally seem to have a strong undercurrent of “the haves” vs. “the have-nots.” While the ideal of voluntary band plans may be good in theory, in practice the reality is often that such plans are aimed primarily at maintaining the status quo and they seldom provide adequately for the experimentation with and use of new modes that is one of the primary purposes of the Amateur Radio Service.

VI. THE ARRL OVEREMPHASIZES THE IMPORTANCE OF AND NECESSITY FOR BAND PLANS IN ITS ZEAL TO SEEK THEIR VIRTUAL CODIFICATION IN THE COMMISSION’S RULES AND THIS ENTIRE COURSE OF ACTION IS BOTH ILL-ADVISED AND UNNECESSARY.

23. The ARRL asserts in the heading of Section III of its comments that “Voluntary band plans are indispensable in the Amateur Service and proper adherence thereto requires the Commission’s support.” Clearly, in this case “support” equals “force of the Commission’s Rules” in the mind of the ARRL.

24. The ARRL has made *absolutely no* showing of evidence *of any kind* to support its implied claim that “non-compliance with voluntary band plans is a significant problem in the Amateur Radio Service.” In fact, other than a vague statement from the minutes of an ARRL Board of Directors meeting that states that the ARRL Directors believe they have observed “... some notable deterioration in adherence to the plans ...” *the ARRL has yet to offer any evidence whatsoever to support their implication that a problem exists.*

25. Simply put, conventional wisdom would dictate that “If there’s no problem, you don’t need a solution.” That the ARRL still deems it imperative to seek to force a “solution” to a non-existent “problem” despite an overwhelming outpouring of comments in opposition to its proposal should be noted by the Commission as an indicator of just how “representative” the ARRL is of the amateur community it purports to serve and represent.

VII. CONCLUSION AND RECOMMENDATIONS

26. This writer believes that this entire proceeding is the unfortunate result of the ARRL seeking to force-fit a rather draconian “solution” to a virtually non-existent “problem”

27. I respectfully request that the Commission DENY the ARRL’s Request for Declaratory Ruling, and consider issuing an admonishment to the ARRL not to waste the Commission’s valuable time with such non-problems in the future. I also respectfully request that the Commission ABANDON this Rulemaking proceeding with no further action.

28. In the alternative, should the Commission decline to abandon this proceeding, I respectfully request that the Commission deem the already-filed “Comments” of the ARRL to be, in fact, their “Reply Comments” and to disallow the ARRL the advantage of an additional reply opportunity not afforded the general public in this proceeding.

Respectfully submitted,

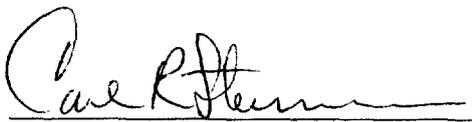


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CERTIFICATE OF SERVICE:

On April 21, 1998, the Commission assigned this item file number RM-9259 and established a 30 day preliminary comment period. (Public Notice Report #2269) The public comment period ended on May 21, 1998, with reply comments due 15 days later. Therefore these comments are timely filed.

On May 26, 1998, I mailed a true and accurate copy of this document (described as REPLY COMMENTS OF CARL R. STEVENSON – WA6VSE in RM-9259) to ARRL General Counsel Christopher D. Imlay, of the Law Firm of BOOTH, FRERET, IMLAY & TEPPER, P.C., 5101 Wisconsin Avenue, N.W., Suite 307, Washington, DC 20016 as required by Sections §1.47 and §1.405 of the Commission's Rules (47 C.F.R. §1.47, 47 C.F.R. §1.405)



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