

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

REPLY COMMENTS IN OPPOSITION

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SUMMARY

These reply 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

On May 21, 1998, I filed comments in opposition to RM-9529.¹ I followed by providing four additional copies, which were received by the Commission on May 26, 1998. In the interim, I have received copies of several comments in opposition from several entities, including Bill Wells, Fred Maia, the Midwest Spectrum Management Alliance,² No Code International, Wayne Zehner, and Henry Ruh. I understand there are also comments in opposition submitted by The Tucson Packet Radio Society and Greg Jones. I have received a copy of the ARRL petition and comments.³ The FCC has acknowledged receiving comments.⁴

¹ with Certificate of Service

² via their Internet web page

³ via their Internet web page

⁴ Bill Cross, W3TN, of Policy and Rules Branch, Wireless

Telecommunications Bureau, Public Safety and Private Wireless Division, presented the FCC forum at the 1998 Dayton Hamvention. He is quoted in the *W5YI Report*, June 1, 1998. "... As I mentioned earlier, in the last month we have received two rule making petitions that may be of interest to you. The first is from the ARRL. It is RM-9259. We received it on April 3, 1998. It is a request for Declaratory Ruling asking that we clarify that 'good amateur practice' entails compliance with voluntary band plans. It also asks that we find that any station that selects a transmitting frequency not in harmony with the voluntary band plans is not operating in accord with Section 97.101 of the rules. It applies to all of the amateur bands. We have already received many comments on this petition. None of them support it. The comment period is open until May 21. Reply comments are due June 5. If you send in a comment, please send a copy to the ARRL." (The emphasis is mine.)

ALL I ASK: OBEY THE FCC RULES

Before becoming involved in this FCC proceeding, I was among those who tried to communicate appropriate comments to those who are responsible for representing my interests at the ARRL. All I ask is that those who claim to be "frequency coordinators"⁵ obey the FCC Rules. It seems there have been some changes at the ARRL, and those of us who have taken this kind of political position have not been appropriately represented by certain incumbent officeholders at the League.⁶

THE JIM MCKINNEY LETTER

With its request, the ARRL office relies on a position taken in a 1983 letter from the FCC's Jim McKinney to a former ARRL Director, regarding "good amateur practice." It references band plans that were at the time, and which now remain, compatible with the FCC Rules. Those band plans were prescribed to

⁵ **and perform the requisite, associated band planning**

⁶ **My comments should not be construed as "League bashing." I am a Life Member of the "League." I believe the ARRL office serves as a source of a number of excellent technical publications. The controversy is with the way some of the elected incumbents have chosen to carry out their responsibilities to the members. An outcome of that is the request that is now before the FCC. The political position stated in that request has been rejected by a number of ARRL members, some of which have filed comments.**

accommodate each of the emission types designated for use by individual licensees, in the Rules. The FCC's position should be left with that. Nothing else is required.

It appears there are some entities who call themselves "frequency coordinators" who do not comply with the FCC's definition of that term. They would seek to use such an additional 'declaratory ruling' to further carry on a pattern of abuse against other FCC licensed amateurs. Organizations that perform "frequency coordination" have been subject to political take-overs by those with special interests⁷ who refuse to obey the FCC Rules, per my previous discussion, and create a 'tyranny of the majority.'

There should be no suggestion, implication, endorsement, or association of the FCC with those who desire to take the statements in the McKinney letter any further.

The position of the Commission quoted on page 11 of the petitioner's request is correct, and should be sustained.

Considering the vague and indefinite construction of the rule requiring "good amateur practice," any action to institute a "declaratory ruling" that this vague

⁷ such as an interest in one emission type - narrow band FM

rule takes on one specific meaning or another would constitute a de facto rule making action. It would be wrong to declare that this rule means that someone's private sector band plan, such as a "regional band plan" or "local band plan," would be treated with the effect of a Federal Agency Rule because someone believes such a plan has been "generally accepted." It would also allow a 'tyranny of the majority'⁸ to proceed to effectively remove⁹ the use of certain emission types from certain bands. That 'tyranny of the majority' would manifest itself in efforts to crowd out certain bands with 'Narrow Band FM,' or similar emissions. That would effectively prohibit the practical use of emission types that require a wider bandwidth, such as the ATV modes, on certain bands. A decision to adopt such a 'declaratory ruling' would also have the other inappropriate consequences the Commission rejected in the 1986 Report and Order.¹⁰

Instead of going along with such a scheme, Commission licensees should be able to continue to fully rely on § 97.3 (a) (21), for the reasons I provided in my previous comments. Further, this definition should not be weakened by a 'declaratory ruling' that would create a whole new controversy or uncertainty.

⁸ if it is a 'majority'
⁹ or "discourage"
¹⁰ Petitioner's paragraph 11, page 8

A MOOT ISSUE?

The petition before you does not provide even one specific example of:

How any particular interference problem is not already covered under the existing rules, or the Communications Act.

An FCC enforcement that should have been carried out, that was not, because the absence of the proposed 'declaratory ruling.'

How the Commission would react any differently to an enforcement complaint, if the proposal were adopted as proposed, or not adopted.

How any change in the FCC Rules or Communications Act has changed the circumstances reflected in the 1983 McKinney letter, resulting in an inability of the Commission to address such interference problems with enforcement.

The proposal, on its face, is arguably moot. The Commission's staff and the public should not be burdened with proposals that would make no difference, have no substance, or create a whole new controversy or uncertainty.

Dismissing the petition at this time will release the staff to spend its valuable time on other urgent issues.¹¹

The petitioner makes the following statement:¹²

This, of course, inevitably caused readers to perceive the quest as a proposal for substantive rule changes.

It is curious as to why such a request would be submitted, and fought for so hard, if there were no substance to it. It seems the incumbents at the ARRL office have gone from an initial position of trying to convince the FCC of the importance and urgency of the proposal, to a position of showing that it has no substance, at all. What is the motive? Why burden the FCC's staff, and the public, if there is no difference, in substance, that will take place if this is adopted, or if it is not adopted?¹³

Many amateurs, representing years of experience as licensees, have filed comments in opposition to this proposal. The incumbent ARRL "General Counsel" complains that he has been "misunderstood." It seems that one of the

¹¹ such as enforcement, generally.

¹² ARRL comments, p. 2

¹³ The law firm filing the request also represents NFCC, Inc. Comments of officials of NFCC, Inc., which were published on the internet, have been quoted by various persons who have commented in opposition.

essential, requisite qualities required of any legal counsel, is the ability to be understood.

I would also suggest that because the proposal would¹⁴ make no substantive difference, if it were either adopted or not adopted, it fails to note a sufficient controversy or uncertainty to warrant the attention requested. It is incompetent to qualify under the standards cited in the petitioner's own footnote No. 3., on page 3, of the comments. All the matters of interference applicable to the petitioner's concern are addressed by other rules, or by the Communications Act.¹⁵

FAIR AND OPEN?

The zeal of the request, in view of the above, and the association of the incumbent ARRL General Counsel with NFCC, Inc. and certain others, has caused ARRL members and amateurs generally to look at this carefully and ask questions. In the petition before you there is this:¹⁶

¹⁴ per the admissions of the Petitioner

¹⁵ Per the comments of the others in opposition to this proposal, it is clear that adopting this would likely do the opposite - to create new controversy or uncertainty, rather than resolve one.

¹⁶ page 4

Band planning is not a novel concept; it has long been used as a means to accommodate the disparate needs of individual users and clubs while minimizing interference to others. It is accomplished through a process in which representatives of all parties interested in using particular frequency bands for particular purposes coordinate those interests in a fair and open manner.

The emphasis is mine. My previous comments, and those of some of the other commenters, well demonstrate that this statement was not appropriate. ARRL members have complained to their Directors for years about closed, secret, unfair and / or inappropriate situations caused by those who call themselves "frequency coordinators," who perform or adopt the requisite band planning. I have attended such a secret meeting, myself, where such statewide band planning was considered. I have also documented¹⁷ a secret meeting of ARRL principals which was conducted at the D/FW Airport Marriott Hotel in Irving, Texas. It is unfortunate that local coordination councils are the subject of political take-overs by those with special interests, as described in my previous comments, who arrogantly refuse to obey the FCC Rules,¹⁸ and / or even openly advocate violations. It is also unfortunate that some of the incumbents at the ARRL have decided to operate in an environment involving secret meetings,

¹⁷ page 4, footnote 4, of my previous comments

¹⁸ § 97.3 (a) (21)

unanswered mail,¹⁹ and a political vacuum - where information needed for decision making and representation of the members who finance their operation, is absent. Further, it is unfortunate that after all of this, an inappropriate statement about the "fair and open" manner is submitted to the Commission as a basis for such a 'declaratory ruling.'

Further, without good reasons, and specific examples, of how any result would change if the proposal were adopted, amateurs must ask what constitutes the real basis or need for this proposal.²⁰ Commenters have been lectured:²¹

As a result, it is unclear that the comments filed to date offer a fair appraisal of the proposal. In fact, with but few exceptions, it is unclear that the comments filed to date reflect even a cursory reading of the proposal itself.

With this, we are accused of not even reading the proposal. This is not fair. Not only have commenters read the proposal, we have also read the statements of other amateurs who call themselves "frequency coordinators," such as those

¹⁹ Incumbent Rodney Stafford is again requested to answer the letter I sent him over one year ago, which is incorporated as an exhibit to my comments of May 21. Incumbents Stafford, Sumner and Haynie are hereby again requested to answer my letter of May 4, 1998.

²⁰ Is there some ulterior motive, which is not spelled out in the request?

²¹ page 2 of ARRL "comments"

which were attached as exhibits incorporated in my May 21 submission. There is no question that the ARRL has formally associated with them - as the ARRL has published the names and addresses of these organizations in its annual Repeater Directories.²²

I also take exception to this inappropriate lecture, directed at ARRL members who have been kept in the dark all too long about these comings and goings.²³

The ARRL board would be well advised, on completing certain changes,²⁴ to open these topics for discussion by members on the pages of its journal, *QST*, and ask for input, before considering them further or filing them with the FCC.

²² A comparison of the names listed there and the statements published on the internet and incorporated as an exhibit to my previous presentation may be revealing. Jim Haynie, the ARRL Director who reports to members in Texas and Oklahoma, stated to an assembled group in Garland, Texas that (1) all the ARRL wants is the listings for its Repeater Directory, (2) the ARRL accepts listings from competing coordinators. On another occasion, about one year ago, he offered to bet me \$10 the NFCC, Inc. "would not exist in one year." I am not a betting man, and did not desire to take \$10 from someone like Mr. Haynie. These positions, however, seem to be in conflict with positions of other incumbents at the ARRL. The ARRL reportedly still refuses to accept listings for its Directory from a competing coordination council in Indiana, which reportedly has 2 1/2 times the membership of the ARRL recognized coordinator. ARRL has a duty to its members to timely resolve each of these issues, in a truly "fair and open" manner.

²³ The persons being lectured are largely ARRL members who want the democratic process described in the ARRL By-Laws to work. It seems it has broken down.

²⁴ The ARRL President has mail from me. The organization has my previous comments in opposition.

I have also asked the ARRL Board to audit those "frequency coordinators" with whom it associates, to determine whether or not they are in compliance with the Rules, particularly § 97.3 (a) (21). In the course of this, an announcement should be published in QST, seeking input from members on any relevant experiences.

Neither the ARRL nor the FCC have had a history of recent success in dealing with malicious interference. The request before you²⁵ says that "citation of amateur band plans as constituting good amateur practice and urging compliance therewith would assist in determining standards for the malice component in a malicious interference case." It is my view that sufficient written regulations are on the books, either in the FCC Rules, the Communications Act, Title 18 of the United States Code, and / or the FCC and ARRL contract regarding enforcement, to deal with improper transmissions and improper conduct of all descriptions. The problem is not with these existing written regulations or the stated intent of them, but with the implementation.²⁶

²⁵ Page 9

²⁶ What must be changed to get the terms of the enforcement contract implemented? Does the FCC perceive a credibility problem at the ARRL? Reports indicate that Arizona amateur Lance Halle secured enforcement of rules against malicious interference - but only after President Clinton and The First Lady intervened on his behalf with the Commission's staff. (Letter from Beverly Baker to Lance Halle, August 22, 1996.) Federal Court records in Dallas show that one of the amateurs employed by a local broadcast station plead guilty in a malicious interference case brought by the FBI. He was required to pay fines, serve on probation, and in-home electronic incarceration. Yet, incredibly, callbook records indicate someone at the FCC renewed his amateur license for a new term. (See *U.S. v. Terry Van Sickle*, case no. 3:93-CR-342-P (01). Sentence date: January 12, 1994.) The FCC has maintained amateur licenses of individuals

I am opposed to malicious interference, rule violations and harassment directed at the Commission's witnesses as much as anyone your office will find. In the interest of fairness, I must look with suspicion on those who claim to oppose this conduct, while retaining an association with those who are subject of enforcement action by the Commission, or where the Commission has gone on record indicating that some other government authority has a more appropriate jurisdiction.

**YES, IT IS PROPER TO
DESIGNATE THIS AS A "PETITION FOR RULE MAKING"**

With this petition, we start with an existing rule that is so vague and general, it is not possible for a licensee to understand what he is either required to do, or to refrain from doing, as I have related herein. So, when a request such as this is submitted, it is only appropriate, given that vague construction, for the request to be designated as a rule making. Accordingly, such a request is, on its face, a de facto rule making petition. Such a request serves as a moral and practical equivalent of a rule making petition.

it says have cheated with the license examination program. (See FCC 94-45, Footnote 4)

The Commission must have the authority to organize these submissions in an orderly manner, and is now doing so in various cases, by designating them as petitions for rule making.²⁷

The incumbent ARRL General Counsel states that the Commission's staff has "mishandled" his pleading.

I do not believe there has been any mishandling. The Commission receives all manner of communications from the public that are subsequently designated as petitions for rule making, even though they may not be originally labeled as such. As the Commission has provided a similar treatment for others, the undersigned is not persuaded by his argument.

The petitioner's organization seems to be "over-lawyered." The time of the Commission's staff should be allocated to other urgent matters. RM-9259 should be dismissed.

Respectfully submitted,

Tom Blackwell

²⁷ One example comes from the Common Carrier Bureau. On May 18, 1998 it designated a Request for Declaratory Ruling by Connie L. Smith (DA No. 98-945) as a Petition for Rule Making.

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June 4, 1998

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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

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