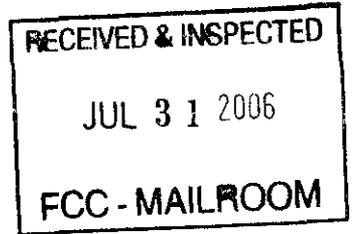


DUPLICATE COPY ORIGINAL

HAMS FOR ACTION (HFA)
Don Schellhardt, Esquire KI4PMG,
Acting President
Hollins University
P.O. Box 9536
Roanoke, VA 24020



July 21, 2006

Secretary
Federal Communications Commission
Washington, DC 20554

RE: Corrected Copy of HAMS FOR ACTION Petition For Rulemaking

Dear FCC Commissioners and Staff,

Enclosed you will find a corrected copy of the July 12, 2006 Petition For Rulemaking that was filed with the Commission by HAMS FOR ACTION (HFA). This version, dated July 20, 2006, corrects 3 errors that our last-minute proofreading did not catch.

1. Page 5, 3rd full paragraph, 2nd sentence -- The following sentence has been deleted: "This policy [the proposed '3-Year Rule' for inspecting, and repairing and/or re-painting, antennas and related equipment] is based loosely on the policy applied by Consolidated Edison to exterior antennas, and related equipment, at the company's powerplants." The sentence was deleted because HFA discovered it could neither confirm or deny whether the policy, which was in effect at some powerplants in the past, is still in effect today.
2. Page 1, 2nd paragraph, 3rd sentence: "These trends make it steadily difficult for the ham radio community ..." has been corrected to "These trends make it steadily more difficult for the ham radio community ...".
3. Page 3, 7th paragraph, 1st sentence: "Amateur Radio is the a form of communications that can operate when everything else is down" has been corrected to "Amateur Radio is a form of communications that can operate when everything else is down."

As with the July 12 Petition, an original and 15 copies of the corrected Petition are being sent to you. We apologize for our errors and any inconvenience they may have caused.

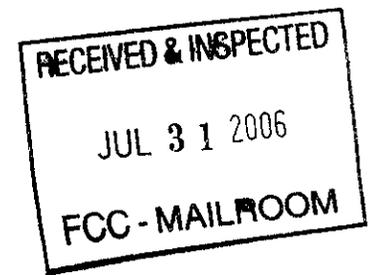
Sincerely,



Don Schellhardt, Esquire KI4PMG

Number of Copies rec'd 0 + 15
List ABOVE
MB 06-16

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



In the Matter of:)
)
Partial and Conditional) Docket _____
Overrides of Certain Bans on)
On Amateur Radio Antennas)

PETITION FOR RULEMAKING
BY HAMS FOR ACTION (HFA)

HAMS FOR ACTION (HFA) is a newly formed group of licensed Amateur operators, aka “hams”. We strongly advocate government action to override bans on ham antennas, and related equipment, which are currently imposed by Homeowners’ Associations (HOAs), and/or restrictive covenants, and/or landlords.

Nationally, 40% of all neighborhoods are now governed by HOAs. That percentage is rising. In some places, including Fairfax County (Virginia) and all of Colorado, HOAs are mandated for new housing by law. These trends make it steadily more difficult for the ham radio community to recruit new participants, especially among the younger generations in urban and suburban areas where HOAs are most prevalent.

At the same time, as owner-occupied housing becomes less and less affordable for many Americans, antenna bans by landlords are also a growing impediment for hams.

Past Petitions on this issue have been rejected by the FCC, but ours is different. See **Appendix B** for an outline, and **Appendix C** for possible actual text.

1. HFA’s New Approach To Overrides Of Antenna Bans

Instead of covering all licensed Amateur Radio operators, we propose to limit antenna ban overrides solely to those hams who are also trained and skilled emergency communicators. We propose to call these hams Emergency Communications Operators, with “EmComm Operators” or ECOs as the shorthand term.

We envision specific eligibility criteria which must be met -- and maintained through periodic self-certifications.

We further propose to maximize the Commission's administrative convenience by relying on self-certification. However, we also advocate, as a deterrent to temptation, fines of as much as \$50.00 per day for any fraudulent self-certification.

By the same token, we further propose fines of up to \$50.00 per day for a knowing failure to provide "reasonable accommodation" where it is required.

Another difference from past Petitions is HFA's inclusion of proposed guidelines for defining "reasonable accommodation". Rather than requiring case-by-case determinations of what constitutes "reasonable accommodation", which is virtually certain to involve costly and time-consuming litigation, and perhaps other delays, this Petition establishes "presumptions" that restrictions on antennas and/or related equipment are "reasonable" so long as certain minimum options are preserved.

At the same time, to leave room for atypical operating conditions and/or other atypical circumstances, we propose to make these presumptions "rebuttable". Therefore, any presumption of reasonableness can still be challenged in court, on a case-by-case basis, by any affected party, *if* a relevant and significant deviation from the national norm can be demonstrated by a preponderance of the evidence.

2. How HFA's Approach Differs From Current Congressional Legislation To Override Antenna Bans

In addition to past, unsuccessful Petitions For Rulemaking on this issue, legislation to override antenna bans has also been introduced in the U.S. House of Representatives by Representative Steven Israel, D-NY. He introduced H.R. 1478 in 2003 and H.R. 3876, an identical proposal, in 2005.

When he introduced H.R. 3876, Representative Israel was joined by Representative Mike Ross, D-AR, as another primary sponsor. Representative Ross serves on the House Energy and Commerce Committee.

This bill, like past Petitions For Rulemaking to the FCC, proposes to cover all hams in its antenna ban overrides.

In another similarity with past Petitions to the FCC, the bill mandates “reasonable accommodation” of ham antennas, but does not define the term -- meaning that its meaning must be hammered out case-by-case, probably through litigation on many occasions.

As **Appendix A** to this new Petition, HFA has included a CHART which highlights how the HFA Petition differs from the Israel/Ross bill on 3 key points.

3. HFA’s Proposed Eligibility Criteria For Emergency Communications Operators

As noted above, past Petitions for antenna ban overrides have proposed to cover all licensed Amateur Radio operators.

However, the Members of HAMS FOR ACTION believe that such overrides will be much more acceptable in affected neighborhoods if the overrides are limited to hams who are clearly performing a vital and necessary service for the community involved.

The demonstrated willingness and ability to conduct Emergency Communications is indisputably such a service.

A. How The Proposed Eligibility Criteria Serves The Public Interest

(1) The first advantage for the affected communities is that Emergency Communications Operators can now be present in neighborhoods where, as a practical matter, they are currently outlawed by contractual fiat.

Amateur Radio is a form of communications that can operate when everything else is down. Because it is a decentralized communications operation with widely scattered participants, it can report more information about more places than virtually any competing information source. Due to the same decentralization, coupled with the prevalence of Amateur Radio operators who have independent power supplies, the Amateur Radio Service can function even when the electric power grid cannot.

During Hurricane Katrina, when even sophisticated military communications were not operating, the President of the United States was able to communicate with the Mayor of New Orleans through Amateur Radio Service volunteers.

In addition, Amateur Radio is often “the firstest with the mostest” in alerting the world to potentially life-saving details of a disaster. Hams provided the first reports to come out of Chernobyl, the recent Asian Tsunami mega-disaster areas and many other sites of catastrophic events.

As another benefit for the general public, the proposed partial and conditional overrides of antenna bans would also empower ECOs to participate in self-training in communications and electronics technology. This will increase the number of Americans with technological skills, some of which are marketable or can become so.

(2) The second advantage for the affected communities is that the eligibility criteria will limit the impact of the overrides, at least initially, to a much smaller number of hams. Given the nature and pace of the self-certification process, it is unlikely that neighborhoods will see a sudden surge of ham antennas overnight.

(3) The third advantage, for the affected communities and the entire nation, is that those new ham antennas which do appear will be owned or used by certified ECOs.

Ultimately, this may be the biggest advantage of all: creation of an incentive for a growing percentage of hams to become trained Emergency Communicators Operators.

See the Section below for a discussion of other proposed eligibility criteria, which address aesthetic concerns.

3. HFA’s New Approach To Addressing Aesthetic Concerns

In another difference from past Petitions, HFA addresses aesthetic concerns.

Past Petitions, by proposing to mandate an undefined version of “reasonable accommodation”, have left it up to the parties to battle over aesthetics on a case-by-case basis. Such a policy encourages costly and time-consuming litigation, as well as other avoidable delays. The lack of clear standards also undercuts negotiations. In the absence of clear “starting points” for negotiation, parties are free to project their fears --

rather than their hopes -- into the vacuums of uncertainty about what other parties might do.

To avoid, or at least minimize, this problem, the HFA Petition For Rulemaking proposes some fixed requirements -- plus a set of “reasonable presumptions” which can guide the remaining interactions between the parties.

A. Proposed “Fixed Requirements” To Address Aesthetic Concerns

As one “fixed requirement”, the Petition proposes that conditions for an ECO self-certification must include painting of the ham’s exterior antenna. The ECO must certify that all owned or used exterior antennas, and equipment, have been painted a color which matches, at least approximately, the immediate surroundings.

As a fixed requirement for re-certification, the Petition proposes a “3-Year Rule”.

HFA’s 3-Year Rule requires that every ECO, at 3-year intervals after the initial certification (Years 3, 6, etc.), must certify to the FCC that he or she has physically inspected the exterior antenna within 60 days of the anniversary date, or more frequently if needed. The ECO must also certify that, based on the inspection(s), he or she has repainted and/or repaired and/or otherwise maintained the equipment, if needed.

B. Proposed “Rebuttable Presumptions” To Address Aesthetic Concerns

In addition to the fixed aesthetic requirements, discussed above, we also propose to establish a “rebuttable presumption” for determining what constitutes “reasonable accommodation” of an ECO’s exterior antennas and related equipment.

The use of a legal presumption will strongly discourage costly and time-consuming litigation. It will also reduce the likelihood of protracted negotiations, since all parties will now have reasonable “starting points” for any negotiated modifications.

At the same time, because these “starting points” are rebuttable in court, when and if sufficient evidence can be mustered, there is still room for one or more parties to

pursue litigation if they believe they can demonstrate special circumstances, such as unusual topography. Such evidence can also be brought to bear during negotiations.

Thus, the HFA Petition would discourage litigation, and/or other delays, but would not prevent them.

Hams could be “rebuttably” limited to “low visibility” wire antennas, with a height of 20 feet, in the case of single family homes and townhomes. The width of such antennas would be rebuttably required to remain within the limits of the ham’s property.

In the case of apartments and condominiums, hams would be rebuttably limited to antennas which do not exceed 3 feet in height, or 3 feet in width, and which are placed within 18 inches of the applicable exterior wall.

4. Legal Liability

We do not propose, or otherwise contemplate, that antenna ban overrides would in any manner eliminate or mitigate an Amateur Radio Operator’s normal liability for possible property damage, failure to remove the antenna and/or related equipment upon leaving the premises and so on.

5. Why We Need Antenna Ban Overrides

As we noted earlier, a growing percentage of housing stock in the United States -- accounting for at least 40% of residential neighborhoods -- is subject to antenna bans imposed by Homeowners’ Associations (HOAs) and/or restrictive covenants.

Further, in rental housing that is not governed by HOAs and/or restrictive covenants, antenna bans are still typically imposed by landlords. As more and more owner-occupied housing has become unaffordable for many Americans, antenna bans by landlords have become a more significant force -- particularly with respect to younger Americans, who were not able to purchase homes at a time when real dollar costs were substantially lower.

Between HOAs, restrictive covenants and landlords, a majority of America’s housing stock falls under antenna bans of one type or another. Freedom to erect even a

modest antenna has been shrinking, with much of the remaining free areas limited to older homes and/or homes outside of major metropolitan areas.

The effect of the antenna prohibitions is to ban much Amateur Radio activity. This occurs because antennas mounted indoors are not particularly effective. Amateur Radio operators living in this housing are limited to mobile or portable operation away from their residence. Since most people spend a lot of time at home, their opportunities for Amateur Radio operation, including emergency preparedness training, are very limited.

The antenna prohibitions strike very hard at young people who would like to participate in Amateur Radio. This inhibits youthful interest in Amateur Radio and its Emergency Communications opportunities.

As HFA also noted earlier, there are jurisdictions where HOAs are actually required in new neighborhoods by law. In such areas, HOAs are clearly a product of government policy rather than market forces.

More common are HOAs which buyers or renters of new homes cannot escape because all banks in the area require developers to require HOAs as a pre-condition for financing. The matter is settled between the bank and the developer before the buyer ever arrives on the scene. We submit that such HOAs are not the product of market forces, either.

In any event, even market forces should be subject to reasonable regulation -- especially when national security and emergency preparedness are at stake. That is the case with antenna bans which effectively bar Amateur Radio emergency communicators from a majority of the nation's neighborhoods.

It is not enough to allow for "suspension" of antenna bans during emergency situations. Few citizens, if any, are going to invest money in the necessary equipment, and both time and money in the training to use that equipment, if they can only operate in an occasional disaster. If the FCC wants hams to provide Emergency Communications for these neighborhoods *later*, it must empower hams to operate in these neighborhoods *now*.

6. Requested Action

For the reasons set forth herein, we urge the Federal Communications Commission to grant this Petition For Rulemaking, proposing partial and conditional overrides of certain bans on Amateur Radio exterior antennas and related equipment, and proceed expeditiously to issuance of a proposed rule.

Respectfully Submitted,



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California

Dated: *July 20, 2006*
July 20, 2006

APPENDICES A THROUGH C
Of
HAMS FOR ACTION (HFA)
PETITION FOR RULEMAKING

July 12, 2006

**APPENDIX A:
COMPARISON ON KEY POINTS:
ISRAEL/ROSS ANTENNA BAN BILL (H.R. 3876)
And
HAMS FOR ACTION (HFA)
PETITION FOR RULEMAKING TO THE FCC**

	<u>(5/22/05) H. R. 3876</u>	<u>(7/12/06) HFA PETITION</u>	<u>Reason(s) For Change</u>
How many hams are protected by overrides of antenna bans?	ALL hams.	Only hams who have self-certified themselves to the FCC as Emergency Communications Operators (ECOs). ECOS are hams with Em-Comm Training and also Membership in a group such as ARES, MARS, etc.	Reduces impact of overrides on neighborhoods. Strengthens case for overrides by tying them to a clear neighborhood interest. Creates incentive for hams to be ECOs.
Who must provide "reasonable accommodation" of ham antennas?	Homeowners' Associations (HOAs) and/or restrictive covenants.	HOAs and/or covenants and/or landlords.	Due to the prevalence of apartments, cities will be left out if we only address HOAs and covenants.
How is "reasonable accommodation" defined?	Not defined. Will presumably be defined case-by-case over time, probably through litigation on many occasions.	Antenna limits are "rebuttably presumed" to be "reasonable" if they allow wire antennas of 20 feet for townhouses and SF homes and antennas of 3 feet for apts./condos.	While the "rebuttable presumption" allows litigation, and/or case-by-case negotiations, it saves time and money by avoiding the need for them when they are not required or desired.

APPENDIX B:

**An Outline of
HAMS FOR ACTION (HFA) PETITION FOR RULEMAKING**

July 12, 2006

HFA has filed a Petition on antenna bans with the FCC.

To facilitate action by the FCC, here is a Checklist of provisions:

HAMS ELIGIBLE TO BENEFIT FROM ANTENNA BAN OVERRIDES

- Self-certified Emergency Communications Operators (ECOs):
 - Continuing Active Membership in RACES, ARES, MARS or a comparable organization _____
 - Successful completion of ARRL EmComm Training I or comparable training _____
 - (Within 1 year) Successful completion of EmComm Training II or comparable training _____
 - (Within 1 year) Upgrade, if needed, from Tech license to a more advanced ham license _____

OTHER ELIGIBILITY REQUIREMENTS

- Antenna and related equipment must be painted a color which matches, at least approximately, the immediate surroundings (exterior walls, trees, fences, etc.) _____
- (Every 3 years) Ham must physically inspect the antenna and related equipment, re-painting and/or repairing it as necessary to keep it fully operational and maintaining the aesthetic quality of its original appearance _____

WHO IS REQUIRED TO MAKE "REASONABLE ACCOMMODATION"

- Homeowners' Associations (HOAs) and/or restrictive covenants (CCC&Rs) _____
- Landlords _____

FINES

- For fraudulent self-certification by hams:
 - \$50.00 per day, up to a maximum of \$2,000.00 in any given 3-year period _____
- For knowing failure to provide "reasonable accommodation":
 - \$50.00 per day, up to a maximum of \$2,000.00 in any given 3-year period _____

THE CONCEPT OF "REASONABLE ACCOMMODATION"

To minimize costly and time-consuming litigation, and other possible delays, provide a definition of "reasonable accommodation" -- stating that certain policies will constitute a rebuttable presumption of "reasonableness" (which can still be challenged in court if any party can show atypical factors which justify different standards)

STANDARDS THAT ARE "REBUTTABLY PRESUMED" TO BE REASONABLE

Single Family Homes and Townhouses:

Height of at least 20 feet for antenna and related equipment,
or 4 feet above the structure's roofline if that is higher _____

Width of antenna and related equipment that keeps it within
ham's property _____

Wire antennas only _____

Condominiums and Apartments:

Height of at least 3 feet _____

Width of at least 3 feet _____

Placement as much as 18 inches away from affected
exterior wall(s) _____

APPENDIX C:

**TEXT OF POSSIBLE REGULATIONS TO IMPLEMENT
HAMS FOR ACTION (HFA) PETITION FOR RULEMAKING**

July 12, 2006

PART ONE --

New Self-Certified Amateur Radio Operator Classifications

SECTION 101. (a) DEFINITION OF AN EMERGENCY

COMMUNICATIONS OPERATOR (ECO). An Emergency Communications Operator (ECO) is a licensed Amateur Radio Operator who self-certifies to the [Federal Communications] Commission, subject to fines for any willful misrepresentation of a material fact, that he or she has successfully completed competent training in Emergency Communications and is a continuing Active Member of an organization which routinely engages in Emergency Communications, and/or in providing support services for “first responders” to emergencies, and/or in providing support services for the armed forces of the United States, and/or in providing support services for other government agencies.

(b) INITIAL SELF-CERTIFICATION. At the time of initial certification, an ECO must certify to the Commission that he or she:

(1) Holds a valid Amateur Radio license;

And

(2) Has successfully completed Emergency Communications Training I, conducted by the American Radio Relay League (ARRL), or has completed comparable training in Emergency Communications, with a comparable value in Continuing Education Units (CEUs).

(c) RE-CERTIFICATION AFTER 1 YEAR. To maintain the certification for more than 1 year, an ECO must certify to the Commission, on or before the first anniversary of the initial self-certification, that he or she:

- (1) Has successfully completed Emergency Communications Training II, conducted by ARRL, or has completed comparable training in Emergency Communications, with a comparable value in CEUs;

And

- (3) Has become an active Member of, and participant in, the Radio Amateur Civil Emergency Service (RACES), the Amateur Radio Emergency Services (ARES), the Military Affiliate Radio Service (MARS), SKYWARN and/or a comparable organization.

(d) RE-CERTIFICATION AT 3-YEAR INTERVALS. To maintain the certification indefinitely, an ECO must certify to the Commission, within 60 days of the third anniversary of the initial self-certification, and within 60 days of the end of every subsequent 3-year period, that he or she continues to serve as an active Member of one of the organizations referenced in Section 101 (c) (3), or in a comparable organization.

SECTION 102. REQUIREMENT TO MAINTAIN DOCUMENTATION OF COMPLIANCE WITH SELF-CERTIFICATION REQUIREMENTS. An ECO or a PART shall be required to maintain documentation of compliance with all requirements for self-certification, and shall be required to provide such documentation to the Commission within 5 days of any request for it by the Commission.

SECTION 103. PENALTY FOR FRAUDULENT SELF-CERTIFICATION. The penalty for any willful misrepresentation of a material fact, related to requirements for self-certification, shall be \$50.00 per day, up to a maximum of \$2,000.00 during any 3-year period.

PART TWO --
Requirements For "Reasonable Accommodation" Of
Certain Amateur Radio Antennas and Related Equipment

SECTION 201. REQUIREMENT FOR "REASONABLE
ACCOMMODATION" OF CERTAIN AMATEUR RADIO EQUIPMENT.

Other provisions of law notwithstanding, any restrictions adopted and applied by a Homeowners' Association (HOA) and/or a restrictive covenant, and/or by a landlord, shall be null and void, and unenforceable, to the extent that they fail to provide for the reasonable accommodation of antennas and related equipment which is used by an Amateur Radio Operator who meets the criteria set forth in Section 202.

SECTION 202. DEFINITION OF AMATEUR RADIO OPERATORS WHOSE ANTENNAS AND RELATED EQUIPMENT MUST BE ACCOMMODATED UNDER SECTION 201. Section 201 shall be applicable to an Amateur Radio Operator who:

- (a) Is accurately self-certified as an Emergency Communications Operator (ECO), pursuant to Section 101;

And

- (b) Has certified to the Commission, at the time of initial self-certification, that all exterior antennas and related equipment, except wire-radiating elements and insulators, have been painted a color which matches, at least approximately, the immediate surroundings (which may include trees and fences, as well as exterior surfaces);

And

- (c) Has certified to the Commission, within 60 days of the third anniversary of the initial self-certification, and within 60 days of the end of every subsequent 3-year period, that he or she:

- (i) Has performed, recently, and more frequently if needed, a physical inspection of the exterior antenna and related equipment;

And

- (ii) Has undertaken whatever repairs and/or maintenance are required to optimize safety and operational efficiency;

And

- (iii) If necessary, has re-painted the antenna and/or related equipment, except for wire-radiating elements and insulators, and/or has otherwise restored any of the equipment, to assure that it retains the aesthetic quality of its original appearance.

SECTION 203. REBUTTABLE PRESUMPTIONS OF "REASONABLE ACCOMMODATION" FOR SINGLE FAMILY HOMES AND TOWNHOUSES. In the case of Amateur Radio Operators who meet the criteria set forth in Section 202, restrictions adopted by an HOA and/or a restrictive covenant, and/or by a landlord, shall be rebuttably presumed to constitute a reasonable accommodation if they allow:

- (a) Height for the antenna, and related equipment, of at least 20 feet, or 4 feet above the structure's roofline, whichever is higher;

And

- (b) Width for the antenna, and related equipment, which is limited to the Amateur Radio operator's property;

And

- (c) Wire antennas with a maximum wire size of AWG No. 12, or wire antennas which use enameled copper or enameled steel.

SECTION 204. REBUTTABLE PRESUMPTIONS OF "REASONABLE ACCOMMODATION" FOR CONDOMINIUMS AND APARTMENTS. In the case of Amateur Radio Operators who meet the criteria set forth in Section 202, restrictions adopted by an HOA and/or a restrictive covenant, and/or by a landlord, shall be rebuttably presumed to constitute reasonable accommodation if they allow:

(a) Height for the antenna, and related equipment, of at least 3 feet;

And

(b) Width for the antenna, and related equipment, of at least 3 feet;

And

(c) Placement of the antenna at least 18 inches from any exterior wall(s);

And

(d) Reasonable use of common space for wires, cables and similar equipment to the extent that such use of common space is demonstrably necessary for safe and efficient operation of the Amateur Radio antenna and related equipment.

SECTION 205. POSSIBLE COMMISSION RE-CONSIDERATION OF REBUTTABLE PRESUMPTIONS OF "REASONABLE ACCOMMODATION". Effective on the fifth anniversary of the effective date of Sections 203 and 204, upon the Motion of an affected party, or upon its own Motion, the Commission shall re-consider any or all of the rebuttable presumptions in Sections 203 and 204 if it can be demonstrated, by a preponderance of the evidence, that changes in technology, and/or in other circumstances, merit such re-consideration.

SECTION 206. PENALTY FOR KNOWING FAILURE TO PROVIDE FOR "REASONABLE ACCOMMODATION" OF CERTAIN AMATEUR RADIO EQUIPMENT. The penalty for knowing failure to provide for reasonable accommodation of certain Amateur Radio antennas and related equipment, used by Amateur Radio Operators who meet the criteria set forth in Section 202, shall be \$50.00 per day, up to a maximum of \$2,000.00 during any 3-year period.