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FCC
Washington D.C.

Re: PRM12WT and Treaty Violation of CC&R's which "run with the land" of the United States

Supplemental Comment

Petitioner adds the following argument in support of the actions requested in PRM12WT.

Executive Summary

Petitioner notes that restrictive covenants and declarations, "run with the land", and are not personal agreements or contracts in and of themselves. They become contracts only upon the transfer of property.

Petitioner alleges that covenants which "run with the land" are subject to Treaty Agreements of the United States which must be enforced by the Federal Government, its agencies, and all state and local governments, when use of the land or property of the United States for a purpose is subject to a treaty obligation.

The FCC is therefore obligated as a matter of law to preempt CC&R's which conflict with a Treaty in its Congressionally authorized area of responsibility or expertise.

Argument and Discussion

That fact that Restrictive Covenants "run with the land" upon valid declaration is a matter of well established law in the United States and supported by over 400 Federal rulings and over 4,000 state rulings across the United States¹.

Restrictions running with "the land" controvert the intent of a Treaty intended to convey permission to a Party Sovereign or its assigns when the restrictions conflict with the Grant of the Treaty, and specifically when the use of the land of the United States for a particular purpose is consistent with public public policy.

Under Federal Law, the FCC is required to extinguish this conflict in favor of the Treaty.

The knowledge of treaty superiority is well known in the legal profession, so petitioner will not further address that issue. The U.S. State Department publishes a document entitled, "Treaties In Force" (TIF). This document lists 43 treaties which have been ratified by the U.S. Government. A review of each treaty is beyond the required scope of the argument presented, however a complete review by the FCC

¹ Easily verified by searching the appropriate Westlaw databases for "run with the land" and covenants.

is warranted to address the issues raised, unless HOA's are preempted as requested in PRM12WT. One of those treaties is the "CEPT" Treaty, which provides for the operation of Amateur Radio Stations in the sovereign territory controlled by the parties.

It is established fact that an Amateur Station consists of at least 3 components, a receiver, a transmitter, and an antenna. Removal of any of these components prevents the station from operating.

The CEPT Treaty is binding upon the land of the United States, as are other treaties, and therefore restrictions and covenants which conflict must be voided.

Private contracts derived from the transfer of restricted property which contain a treaty violation against the land must therefore contain the same defect, conflict with public law, and are equally unenforceable.

The exception in PRB-1 for HOA contracts that derive their authority from land restricted by CC&R's is simply unlawful on its face, because the Commission by this policy has promulgated a Federal Policy conflicting with a Treaty of the United States.

There is no remedy at law, the defect is Constitutional.

To illustrate, the petitioner offers two examples.

First, consider Mr. Ted Turner, a public individual known to own or control a large segment of the United States. Mr. Turner could, under current Commission policy, limit Amateur Radio Stations over a significant part of the land of the United States. This limitation, while currently allowed by the exception in PRB-1 would defeat the purpose of CEPT.

Second, consider the Amateur who attempts to operate his Amateur Radio Station on a visit to the United States. The visiting Amateur desires to string a simple wire or use a portable window antenna to accomplish this purpose from the home of a relative, friend, or even from a hotel or motel encumbered by a CC&R.

Under the existing rules of most HOA's, as enabled by CC&Rs against the land, the CEPT Amateur would create an actionable violation from which there is simply no timely recourse, especially as relates to the commonly encountered megalomania of HOA Boards.

This situation would not create international goodwill, in fact far from it. Further it would disallow the intent of the treaty. The Commission should therefore invalidate CC&R's which prohibit Amateur Antennas because these restrictions conflict with the treaty obligations of the United States.

There are several ways in which the Commission could accomplish this task, the foregoing perhaps raising issues of taking without compensation. The Petitioner suggests that the Commission overtly establish a "Public Policy that Amateur Radio Antennas Cannot be Prohibited".

Petitioner believes that a pronouncement of Public Policy would render existing agreements "unenforceable".