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MAR 28 2013

FCC Mail Room

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March 22, 2013

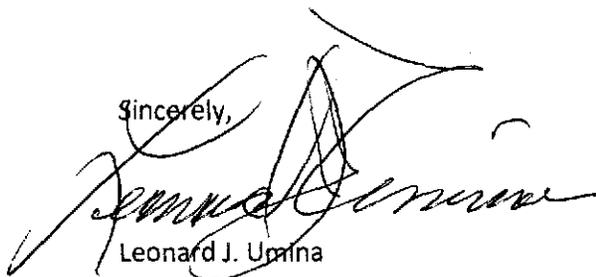
FCC  
Office of the Secretary  
Marlene Dortch  
445 12<sup>th</sup> St. S.W.  
Washington, D.C. 20554

Dear Secretary,

Enclosed please find a Petition for Rulemaking supplied as an original plus 9 copies.

I would appreciate contact when a proceeding number is assigned.

Sincerely,



Leonard J. Umina

No. of Copies rec'd 0 + 9  
List ABCDE  
WTB 13-8

## Petition for Rulemaking

Petitioner: Leonard J. Umina, W7CCE  
324 Arabian Drive  
Gilbert, AZ 85296  
480-664-2485

Date: March 22, 2013

Received & Indexed

RE: PRB-1 Modification

MAR 28 2013

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### Summary

Leonard J. Umina, W7CCE, Petitioner, offers evidence that antenna structures decrease the value of real estate and petitions the Commission to modify PRB-1 to provide equality of burden by seeking administrative relief.

### Background

Owners Associations became prevalent after the Civil War when certain communities sought to restrict the presence of blacks. Owners Associations were replaced about 50 years later with "redlining" which achieved the original purpose with a more palatable goal, "investment protection". A few decades later, the discrimination of redlining was observable, and Congress outlawed it. The result was a resurgence of Owners Associations cleverly cleansed of overt discrimination, but generally operable nevertheless to segment the market by adding excessive fees which minorities cannot afford.

## Home Owners Associations Are Right

### Introduction

The most common goal of a Home Owners Association ("HOA") is to "preserve value" of property by forcing aesthetic appearance complicit with a community vision to create perceived value. The majority seek to prohibit antenna structures. Even in their infancy with regard to market penetration the practice of antenna prohibition was so widespread that the FCC issued the OTARD Rule. Almost 50 years later the Commission still deals with violations of this simple rule on a routine basis.

Prior petitions have attempted to demonstrate an inconsistency between the alleged goal of maximizing real estate value and the existence of towers and antennas. The ARRL commissioned a study demonstrating no connection existed, but the FCC was unprepared to act simply on that basis and strong arguments were made in opposition.

### Argument

Petitioner argues that HOA's are correct; antennas of any construction or purpose degrade the aesthetic appearance of property.

The necessity of the OTARD Rule supports this argument, as does PRB-1 in the greater community which it currently targets.

Courts have referred to Owners Associations as “geographic monopolies”. They create one market inside the monopoly controlled geography and another outside.

By prohibiting antenna construction and other annoyances inside their markets, “geographic monopolies” attempt to maximize the price of their real estate by forcing the “negative impact” of non-aesthetics to be concentrated “elsewhere”.

Petitioner argues that the act of concentrating “negative impact”, specifically antennas, affects market prices in the “elsewhere”, and that the Commission aids and abets this practice with PRB-1.

Under current Commission policy, HOA’s are free to create geographic monopolies of value differentiated by a lack of value lessening antenna structures simply by agreeing among their members to do so.

Those who live in the “elsewhere” are not so lucky, and are forced to accept an unequal distribution of “value lessening” antenna structures under force of Federal Law.

By permitting *and even suggesting* that these “value lessening” structures be located outside of an HOA, the Commission discriminates against those who own property outside an HOA violating the 14<sup>th</sup> Amendment.

### **Conclusion**

The Commission’s PRB-1 was an important step forward in preserving the well documented public services provided by Amateur Radio, but it’s modification is long overdue.

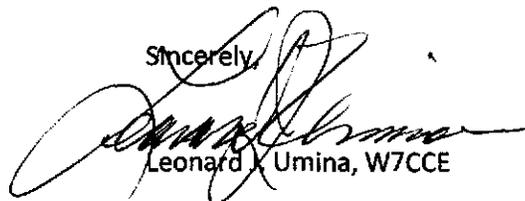
We are a nation of laws. The law in a Republic must apply equally to all citizens. We look to the law for equal protection, but we also look to it for equality of burden. The concept of unequal burden implies favoritism, prohibited by the 14<sup>th</sup> Amendment.

In some cases, such as a graduated income tax, exceptions may be appropriate; however, unequal burden simply by private contract is unconscionable.

There exist two logical paths which would satisfy the law. The Commission can remove PRB-1 entirely and permit all communities equal protection from antenna structures, or it can extend PRB-1 to Owner’s Associations creating an equal burden.

Petitioner argues that the public interest is best served by extending coverage of PRB-1 to Owner’s Associations, and respectfully requests that the Commission do so forthwith.

Sincerely,



Leonard J. Umina, W7CCE