ARRL The national association for AMATEUR RADIO™

MEMORANDUM

TO: ARRL Officers, Directors and Vice Directors

FROM: *Ad Hoc* Committee on Proposed Amendments to Governing Documents

DATE: July 7, 2017

RE: Committee Analysis and Recommendation

On April 3, 2017, two memoranda were submitted to the ARRL Board of Directors (including Vice Directors) raising the alarm about an existing crisis in the formal governance of the League due to an alleged lack of "compliance" of its organizational structure with Connecticut corporate law. The focus of those memoranda was our system for the role and function of Vice Directors. After it became clear that there was not, nor has there been, any illegality to the functioning of the ARRL BOD as confirmed by the League's outside counsel, Day Pitney LLC (DP), the subject continued to be pursued by various factions of the Board resulting in, at least, five different sets of amendments: the "alphabet soup" amendments, A through D, which provide some useful updates to the governing documents of the ARRL, but are much more significantly designed to eviscerate the current standing, role and rights of the elected Vice Directors and put Directors at risk of expulsion by a subset of their peers.[1] In contrast, the Raisbeck/Tiemstra Amendments, noticed on June 21, 2017, (the R/T Version) were drafted to address a couple of necessary enhancements to the Articles of Association and Bylaws while preserving and clarifying the League's present corporate structure in an effort to eliminate any real or imagined "compliance" issues.

The dramatic nature of the changes in the League's governance contemplated by the proposed modifications to the Articles and Bylaws cannot, and should not, be minimized or underestimated. Making Directors accountable to other Directors rather than the members is a paradigm shift away from the concept of this membership organization. At present, as with the Directors, Vice Directors derive their standing, role and value to the organization from the fact that they are elected directly by the membership (Article 5), and, as to Vice Directors, have the right and responsibility to vote in the Director's absence and succeed to the Director's position upon its vacancy (Article 7). This highly important and fundamental structural basis for the Vice Director's position militates in favor of the Vice Director's full participation in the governance of the corporation. Indeed, the Vice Directors have the same eligibility requirements as the Directors (Article 12), the Bylaws provide for Vice Directors to serve on the Board's standing committees (Bylaw No. 37), and Vice Directors are subject to the same conflict of interest policy as Directors (Bylaw No. 45). Therefore, for virtually all practical purposes, Vice Directors act

[1] Although the drafters of these documents are unidentified (except for Director Lisenco), they were apparently prepared without the assistance of outside corporate counsel because, unlike the current Articles and Bylaws, they contain new provisions that appear to directly violate Connecticut corporate law such as the proposed authority for the Board to remove elected Directors (*see*, rev'd Art. 7, Bylaws 24 & 47, and C.G.S. §33-1088).

and function as members of the Board of Directors or as the League's counsel has stated it: "vice directors are in many respects the practical equivalents of directors." (DP 3/17/17 Memo, p. 3.)[2] Clearly, the entire election and eligibility provisions for Vice Directors were designed to establish them as the equivalent of Board members.

The alphabet soup proposals all share the general theme of consolidating the policy making power of the Board in a much smaller group of individuals, conceivably just the officers or Executive Committee, or a combination of the two. Indeed, the potentially unlawful attempt to authorize a subset of Directors to expel a Director elected by the membership is an affront to the members and likely contrary to public policy. In addition, the A and C proposals marginalize the role and influence of Vice Directors by abolishing their right to vote and succession, removing any possibility of the Vice Directors directly affecting Board decisions either now or in the future thereby rendering their opinions essentially no more meaningful than those of your average member. While the election proposals (A & C) seem to retain the appearance of member involvement, the proposals beg the question as to what the Vice Directors are being elected for. If they have no opportunity to ever vote on anything and no right of succession, why bother? Leaving the members with the right to elect a temporary "advisor" is a pyrrhic victory indeed for the membership. The appointment proposal (B) goes a step further by, at best, reducing the Vice Director to a "friend" or "follower" of the Director who dares not express a contrary opinion for fear of being dismissed out-of-hand, without cause. This proposal is not very dissimilar to proposal D in that the Board would soon seek to eliminate the expense of having "hangers-on" at Board meetings who are no more than some sort of glorified assistant serving "at the pleasure of the Director."

The advantages to adoption of one of the alphabet soup proposals include: possibly quicker and more streamlined decision-making, some fairly immaterial costs savings, the transfer of more authority from the Board to the staff, fewer inquiries for staff to respond to, less people for management to be answerable to, possibly less accountability by the remaining Board members and some imagined comfort that there is clearer compliance with Connecticut corporate law (*but see,* footnote 1). On the other hand, many members of the League who feel disenfranchised will likely surrender their memberships and/or curtail their financial support, and an a organization already struggling to maintain its relevancy, to old and new licensees alike, will create another source of criticism and dissatisfaction. Enterprising Hams will likely turn to their own local organizations and groups that are more responsive to their needs. Of course, Board meetings are unlikely to be any more efficient if one of the A through C proposals is adopted to keep a room full "advisors" in attendance at Board meetings.

The process that has been pursued in amending the Articles and Bylaws leaves much to be desired. The fact that there are five different proposals before the Board would appear to indicate that a super-majority is unlikely to support any single proposal much less a consensus. This process was not begun in a normal and deliberative fashion by the Board through a study committee with the assistance of appropriate professional and member input.

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[2] Recently, our General Counsel has insisted emphatically that, despite such statements "there is absolutely no doubt" that the Vice Directors are not members of the Board. However, the fact of the matter is that DP's opinion was sought purportedly in an effort to investigate this very ambiguity. Only the Connecticut Attorney General, Secretary of State or a court of law can render a definitive opinion.

Begun as a clarion call to address an artificial crisis in Board governance, the procedures followed to implement the proposed amendments clearly have not been crafted to achieve consensus.[3] The process has been intentionally divisive, offensive and insulting to the Board. From the very beginning efforts have been made to not only remain secretive about the process and refuse to inform the membership, but to suppress discussion and debate on e-mail reflectors, delay dissemination of information to Vice Directors for no legitimate reason, and remove the entire discussion from ODV for the past two months. Such an "us versus them" approach has not been remotely fair or even-handed which does not bode well for the proposed consolidation of power. On the contrary, this manufactured crisis which has paralyzed the League's current governance should give everyone pause to consider how far we have come from the collegial atmosphere that used to characterize the Board's functions.

In light of the foregoing, the Committee recommends one of two courses of action: one that the Board defer consideration of any of the proposals at the upcoming July meeting and, if desired by the Board, embark on an appropriate and thoughtful plan to propose revisions to the Articles and Bylaws. Such a plan should include an investigation, study, review and discussion of all of the issues involved with input from the membership along with the assistance of appropriate professionals in order to insure compliance with applicable law and public policy.

In the alternative, the Committee recommends consideration of the R/T Version of the Amendments which primarily retain the provisions concerning Vice Directors intact while clarifying them in a way to avoid any ambiguity or issue with Connecticut corporate law. The R/T Version also adopts several of the more useful amendments from the competing versions for updating these documents. However, the R/T Version does not attempt to alter the provisions for recalling Directors or otherwise add any provisions for the removal of Directors which would seem to run afoul of specific provisions of Connecticut corporate law (*see,* footnote 1). It is the sense of the Committee that elimination of the term "Senior" in reference to that class of director would have a beneficial effect of retaining current nomenclature and confirm the intent of the proposal to merely clarify the existing structure of the organization. Therefore, on any motion to adopt the R/T Version of the amendments the Committee urges that such a friendly amendment be made.

[3] Despite the typical requirement of a three-fourths vote to amend the Articles and Bylaws due to the significance of such an endeavor (Art. 10), the notice was rushed out by e-mail on June 20 in an attempt to reduce the requirement to a two-thirds vote. However, the notice appears to be defective because of the ambiguities in Article 10 about "electronic mail." Only the R/T Version of proposed amendments was also "placed in the mail" as required by the Article.