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July 13, 2021

To: ARRL Board of Directors  
From: David Siddall (K3ZJ), ARRL Washington Counsel  
Re: Report on FCC and Related Regulatory Matters January, 2021 – July, 2021

## **Introduction**

This report addresses regulatory actions from January, 2020, through early July, 2021. A list of pending proceedings that are of interest as of July 12 are in the last section of this Report.

FCC and other federal government operations are expected to begin returning to a “new normal” after Labor Day. Return-to-work plans for federal workers are being coordinated by a White House-led task force led by the COVID-19 Response Team, the General Services Administration (GSA) (which is in charge of federal buildings and offices), and the Office of Personnel and Management (OPM) (which is in charge of the federal workforce).

The FCC and other agencies have been directed to submit final reopening plans to the Task Force by July 19. Earlier this week, when asked by reporters about the plans, FCC acting Chairwoman Rosenworcel stated that the FCC plan will be submitted but offered little detail. The FCC also must complete negotiations with the National Treasury Employees Union that represents its employees on return safety protocols and other related matters before employees generally may return. (It seems to be more complicated than one would at first would think.)

The Commission's work is being directed by an acting Chair with a 2/2 partisan split. Items with a broad consensus at the Commission level are moving forward. Others are on hold. The staff is continuing to issue rulings on delegated authority that normally are decided at that level. There have been rumors, but nothing definite, about when the President will nominate a new Commissioner and designate a permanent chair. NTIA also lacks permanent leadership. Congressional pressure has been noticeably building for the White House to proceed on these nominations, and the number of FCC-related items in an Executive Order last week indicates White House awareness.

With regard to amateur items in particular, there has been no movement on the major items. I met with the FCC Chairwoman's wireless advisor in early June to advocate for attention to and resolution of long-pending dockets. A few days later President Roderick forcefully addressed the need for action at the EC meeting, and I again discussed the delays with the FCC staff. I know that the Chairwoman's advisor has discussed the matter with the Bureau, and I hope that action is forthcoming.

I do believe that there is a better -than-even chance that there will be movement on a number of the items by this autumn. I have to say that action is long overdue and that, in my opinion, the lack of updating the rules is impairing the continued viability of some aspects of the amateur service. In retrospect, it is clear that FCC action on amateur items that must be ruled on at the Commissioner level basically stopped at the end of 2016. I can only push to have these items addressed and resolved in the near future.

### **January 6 Investigations**

I would be remiss if I did not note that there are complicating factors not of the Commission's doing and that it takes time to work through some of the charges that licensed amateurs themselves have levied against the service in writing to the FCC. For example, one filing contains allegations made by an amateur in a public letter to the acting FCC Chairwoman suggesting that digital encrypted communications were used by radio amateurs involved at the Capitol on January 6.

Congressional committees and law enforcement agencies continue to dwell down on the January 6 events. With multiple on-going investigations and indictments, we hope that amateur radio will stay out of the spotlight. So far there is one known case of an amateur being investigated, but he has not been charged and what actions are being focused on in his case are unknown. In another case, specific frequencies were mentioned in charging documents, but they were outside the two meter amateur band and there was no indication of use by an amateur licensee.

However, in another very recent development, an FBI document released pursuant to an FOIA request indicates that there is a separate and more extensive report on alleged use of "amateur radios" that day. That document, titled "Domestic Violent Extremists' Use of Amateur HAM Radios for Communications and Other Pre-Operational Planning" (17 January; SIR-00340433389) has now

been requested by media multiple interests. We will see whatever is released by the FBI.

I want to emphasize that use of the term “amateur radios” does not necessarily equate to use by licensed amateur radio operators. The “radios” could be the type of handhelds and other equipment widely sold to unlicensed persons on Amazon and similar websites and which many view to be a type of “amateur radio.” They are, in fact, also used by licensed radio amateurs. It probably is no accident that, shortly after January 6 Amazon in particular announced a tightening up its practices and stated that it will require proof of FCC certification of radios sold on its site.

At the FCC, these events have renewed sensitivity about alleged encryption. In that context it came to the Commission’s attention that certain equipment sold in the amateur market may have accessible encryption capabilities that derive from the same or similar units being marketed commercially. Unfortunately, filings in the symbol rate proceeding by some hams continue to allege use of digital encryption techniques in the ham bands and these have taken on new significance (as unfounded as they are) and become an obstacle to quickly addressing the long-pending symbol rate issue. A recent filing in that Docket even suggested a link to the Capitol events of January 6, as noted above.

Given these events, the band plan adopted by the Board has been put into the context of advocating immediate action on it and other spectrum-related issues. After some delays, it should be submitted this month, after review by the Executive Committee.

### **FCC Update: January – June, 2021**

During the January-June period, the following FCC proceedings were of concern.

- **Additional VECs.** ARRL opposed a pending FCC suggestion that more VECs are needed to administer amateur examinations. The matter is one on which the staff can act, and is pending in the FCC’s Mobility Division. While the FCC had suggested possibly appointing up to five additional VECs, one problem with that result is that there have never been accepted criteria for accepting or rejecting VEC applications. All 28 applicants were approved in the initial round, 14 of which continue to be VECs. We also note the lack of need. Earlier this year record numbers of examinations were administered and there appears to be sufficient “headroom” for significantly more without an increase in the number of VECs if there is demand.
- **Application Fees.** Despite circulation of false information, the date on which the Commission’s new \$35.00 application fee has not yet been established. Some amateurs apparently misread an FCC announcement that concerned application fees for unrelated license fees. There also was a

“proposal” making the rounds that Congressional notification could be used to try to stop implementation of fees. Securing a Congressional override was never a viable option, but in any event the time for doing so is expired. I set up a meeting with FCC staff and the VECs to assist in ensuring that the roll-out at examinations sites is as smooth as possible and consistent across different VECs. That meeting was postponed and now is scheduled for July 15.

- **Licensee Privacy.** When the FCC announced that it would start requiring email addresses from all applicants – which went into effect on June 29 -- ARRL obtained agreement from the FCC that email addresses would not be made publicly available. In this connection, ARRL’s Maria Somma brought to my attention that some email addresses are made available through CORES registration, which is required to obtain the FCC FRN account that permits filing an electronic application. I brought this to the attention of the FCC staff, and they are looking into this aspect. Director Jairam also brought to my attention a long-dormant 2015 proceeding in which the FCC had proposed to remove from public view amateur radio licensee application and address information not associated with a current license or pending application. I brought this proceeding to the attention of the FCC staff and believe that a more comprehensive review of what information should be made public and what remain private is now under active consideration. An FCC lawyer specializing in privacy law is said to have been assigned to advise on this and related issues.
- **Radiofrequency Safety.** In December, 2019, the Commission eliminated its “categorical exemptions” for radio amateurs that had been based on power and frequency. The new rules went into effect on May 3, 2021 for all new or modified stations, but current stations have two years from May 3 to perform new evaluations if necessary to ensure compliance. The ARRL RF Safety Committee has had a series of meetings with the pertinent FCC staff and is working on changes to the Amateur portion of the FCC Advisory Bulletin, OET Bulletin 65B. The Committee also is working through issues related to properly assessing handheld and mobile equipment. In this regard, there is a relevant article in the July/August QEX that seems to demonstrate that commonly-used power limits for such devices should be safe, with some precautions and limitations. Finally, the Committee and HQ staff have just announced an “RF Calculator” available at [arrl.org](http://arrl.org) that will be helpful to many amateurs in accurately assessing their stations.
- **3.3 – 3.5 GHz Band.** Start of the commercial auction for 3.45 – 3.55 GHz is scheduled to commence in October. Based on that start date, notice to cease Amateur operations on 3.45 – 3.50 GHz is expected during the first quarter of 2022. The possible re-allocation of more of the band for 5G

services continues to be discussed at the staff level, but proceeding slowly without permanent senior leadership at either the FCC or the NTIA. Any agreement would put continued amateur secondary use of these frequencies at risk. Current users should be encouraged to continue operating in this band.

- **5.850 – 5.895 GHz Sub-band.** Several automobile interests and the Amateur Emergency Data Network (AREDN) have appealed the FCC reallocation of this sub-band from vehicle safety on a primary basis to unlicensed, which is an unallocated designation. The FCC made no change to the existing Amateur secondary allocation. The result of the FCC action is that amateur radio uses of this sub-band are now *quasi-primary*. Amateur operations no longer can be shut down by another non-federal user. (We remain secondary to federal users.) Unlike the primary vehicle safety uses now displaced, not only can unlicensed *WiFi* not require cessation of amateur operations, but amateur operations can require cessation of any unlicensed operations that interfere with their operations.
- **Fishing markers in the upper 160 meter band.** On June 15, the FCC launched a new proceeding on June 15 in which it requests comment on whether transmitters used to mark fishing equipment should be permitted access to one or more frequencies used for the marine Automatic Identifier System (AIS) that serves shipping safety purposes. Currently, low-power buoy and fishing equipment markers use 1.900 – 2.000 MHz. AIS frequencies are in the VHF range around 160 MHz. Congress statutorily required the Commission to consider whether fishing equipment markers would be an appropriate use for the AIS system and could be implemented without impairing AIS' primary shipping safety uses. The EC has directed that short comments be filed in favor of moving the fishing buoy transmitters to the AIS frequencies if feasible to do so without impairing the safety purposes of the AIS system. Comments are due by August 6 and reply comments by Sept. 7.

### **Regulatory Outlook and FCC Proceedings of Note**

As discussed above, we are strongly advocating for the FCC to address the pending issues, including the spectrum issues and ARRL band plan proposal. Assuming that issues related to January 6 do not become dominant, we do expect proceedings to begin moving. With a 2/2 split on the Commission, anything that becomes controversial among the Commissioners inevitably will be delayed until a fifth Commissioner is appointed and a permanent Chair designated.

## WT Docket 16-239 -- Symbol Rate Proceeding

As discussed above, there has been no movement on this or other pending matters. When no action was seen in the first half of the year, counsel met with the acting Chairwoman's wireless legal advisor to advocate that action be taken. There have been discussions between and among the various offices that lead me to believe that at least some issues will be addressed.

## RF Exposure (Safety) Regulation

Discussed above. The substance of an ARRL Request for Clarification pertaining to LF and handhelds/mobiles is expected to be substantively addressed in the context of work being done on an update to FCC Bulletin 65 Supplement B addressing RF exposure requirements for amateurs.

## WRC-2015 60-meter Allocation

The ARRL 2017 petition to implement the WRC-2015 allocation for the 5 MHz band (RM-11785) remains pending. I have had some discussions with staff, but at the moment it appears that the staff favors changing the rules to correspond with the allocation – which is for 15 watts within a small area. Since amateurs today are permitted 100 watts on additional spectrum, it would not be in our best interest to accelerate this item. I am keeping watch, however, in case an opportunity arises to again argue for 100 watts and grandfathering of the existing channels.

## RM-11767 -- HF Amplifier Proceeding

The Commission issued a Notice of Proposed Rulemaking (NPRM) in response to a Petition for Rulemaking filed by Expert Linears America, LLC (SPE) requesting elimination of the rule limiting the gain of HF amplifiers to 15 dB be eliminated. This petition continues to be pending. This will be included in suggestions for further action and adoption in an “omnibus” Notice of Proposed Rulemaking intended to address multiple amateur regulatory issues, as discussed above.

## RM-11828 – Technician Class Privileges

In February 2018, ARRL filed a petition to upgrade the Technician license by providing digital and voice privileges on 80, 40, and 15 meters. Strong, but by no means unanimous support was expressed for this proposal. Opponents argue that digital and other privileges should not be extended to Technician class licensees because it would grant too many privileges to beginners for reasons such as QRM, less incentive to upgrade, etc. This petition will be flagged to be included in the proposed omnibus Notice of Proposed Rulemaking discussed above.

### RM-11759 – Rebalancing 80/75-Meter Sub-bands

The ARRL petitioned to amend the 80 and 75 meter sub-band divisions in early 2016. The filing was accepted for comment and remains pending. In its petition, the ARRL requested that the lower edge of the phone band, currently 3.600 MHz, be shifted up to 3.650 MHz; that RTTY/data be permitted in the 3.500 – 3.650 MHz sub-band; that the ACDS subband be shifted upward to 3.600-3.615 MHz to correspond with IARU band plans; that Novice and Technician class licensees be authorized to use CW, RTTY and data modes in the 3.600-3.650 MHz segment and that General and Advanced class licensees also be granted access to the 3.600-3.650 MHz segment. This petition is proposed to be included in any future FCC Omnibus rulemaking.

### RM-15-81 Removing Stored Licensing and Application Data from PublicView

In 2015, the Commission proposed removing any non-current licensing and application data from public view on its website. The intent was to protect the privacy of amateur and possibly other applicants, since home addresses often were used. As the Commission pointed out in its proposal as an example, a person coming under threat might change their address to a Post Office box, but the original address still remains viewable in the FCC's ULS system. The staff is re-evaluating its proposals in this docket in conjunction with requests to mask email addresses in both its CORES (FRN) system as well as its licensing system.

### WT Docket No. 21-230 – 160-Meter Fishing Buoy Proceeding

Low-power buoy and fishing equipment markers use the top end of the amateur 160-meter band, 1.900 – 2.000 MHz. Congress statutorily required the Commission to consider whether fishing equipment buoys and similar markers would be an appropriate use for the AIS system and could be implemented without impairing AIS' primary shipping safety uses. AIS frequencies are in the VHF range around 160 MHz. The EC discussed this issue and directed that short comments be filed in favor of moving the fishing buoy transmitters to the AIS frequencies if feasible to do so without impairing the safety purposes of the AIS system. Comments are due by August 6 and reply comments by Sept. 7.

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