



Federal Communications Commission
Washington, D.C. 20554

February 28, 2007

DA 07-898

Don Schellhardt
P.O. Box 9536
Roanoke, VA 24020

Dear Mr. Schellhardt:

This is in response to the petition dated July 21, 2006 that you filed on behalf of Hams for Action (HFA), requesting that the Commission adopt rules that, under certain circumstances, override covenants, conditions, and restrictions (CC&Rs) that prevent amateur radio operators from installing antennas and antenna support structures.¹ Specifically, HFA requests that the Commission preempt CC&Rs that do not provide reasonable accommodation for an amateur radio operator who is an “emergency communications operator” (ECO). HFA proposes rules regarding certification of ECOs and setting specific criteria for what constitutes reasonable accommodation. For the reasons set forth below, we deny the petition.

The Commission has previously addressed the question of whether to preempt CC&Rs in deeds and bylaws that restrict the installation of antennas and associated support structures used by amateur radio stations. In the *PRB-1* decision, the Commission established a policy of limited preemption of state and local regulations governing amateur station facilities, including antennas and support structures, but expressly decided not to extend its limited preemption policy to CC&Rs in home ownership deeds and condominium bylaws because “[s]uch agreements are voluntarily entered into by the buyer or tenant when the agreement is executed and do not usually concern the Commission.”² In 2001, the Commission rejected a petition requesting that the Commission adopt rules to preempt CC&Rs that do not provide reasonable accommodation for amateur radio operators, and affirmed that the limited preemption policy of *PRB-1* applies only to state and local regulations.³ The Commission noted that its decision in *PRB-1* to exclude CC&Rs from its preemption policy was premised upon the fundamental difference between state and local regulations, with which an amateur operator must comply, and CC&Rs, which are contractual terms to which an amateur operator voluntarily subjects him- or herself.⁴ The Commission also concluded that “there ha[d] not been a sufficient showing that CC&Rs prevent

¹ Petition for Rulemaking by Hams for Action (HFA) (filed July 26, 2006, corrected July 31, 2006) (Petition).

² See Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, *Memorandum Opinion and Order*, PRB-1, 101 F.C.C. 2d 952, 960 n.6 (1985) (*PRB-1*).

³ Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antenna and Support Structures, and Amendment of Section 97.15 of the Commission’s Rules Governing the Amateur Radio Service, *Memorandum Opinion and Order*, 17 FCC Rcd 333, 337 ¶ 9 (2001) (*MO&O*), *aff’g Order on Reconsideration*, 15 FCC Rcd 22151 (WTB 2000), *aff’g Order*, 14 FCC Rcd 19413 (WTB 1999), *recon. dismissed*, 17 FCC Rcd 19408 (WTB PSPWD 2002).

⁴ *Id.* at 17 FCC Rcd at 335-37 ¶¶ 6-8.

amateur radio operators from pursuing the basis and purpose of the amateur service.”⁵ It added that, should Congress see fit to enact a statutory directive mandating the expansion of its limited preemption policy to include more than state and local regulations, it would expeditiously act to fulfill its obligation thereunder.⁶

We conclude that HFA has not presented grounds for the Commission to revisit this policy. HFA argues that its proposal is different from proposals the Commission rejected in the past, in that HFA proposes that the Commission preempt CC&Rs only when the amateur operator is an ECO.⁷ It also offers specific guidelines to define reasonable accommodation, rather than relying on case-by-case determination.⁸ Neither of these features of the HFA proposal, however, addresses the Commission’s reasons for excluding CC&Rs in private covenants from its limited preemption policy. As the Commission reiterated in 2001, it is reluctant to preempt private parties’ freedom of contract unless it is shown that private agreements will seriously disrupt the federal regulatory scheme or unless there is another strong countervailing reason to do so.⁹ Preempting contractual terms only when one party is an ECO, and only according to specific technical guidelines, would not be consistent with that concern. We conclude, therefore, that the petition presents no evidence of an existing problem that has not been considered before or other evidence meriting a rule change.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.401(e) of the Commission’s Rules, 47 C.F.R. § 1.401(e), the petition for rulemaking filed July 21, 2006 by Hams for Action IS DENIED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁵ *Id.* at 335 ¶ 6. The Commission added, “In this regard, we note that there are other methods amateur radio operators can use to transmit amateur service communications that do not require an antenna installation at their residence. These methods include, among other things, operation of the station at a location other than their residence, mobile operations, and use of a club station.” *Id.*

⁶ *Id.* at 17 FCC Rcd 336 ¶ 8. As HFA notes, such legislation has been introduced in past sessions of Congress. *See* Petition at 2 (citing H.R. 1478 (2003); H.R. 3867 (2005)).

⁷ *See* Petition at 1. It believes that “antenna ban 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.” *Id.* at 3.

⁸ *See id.* at 2-3, 4-6. These suggestions include painting the exterior antenna and requiring that the ECO certify to the FCC that the antenna has been inspected, maintained, and re-painted, if needed, every three year; and allowing installation of wire antennas at a height of twenty feet and the width of the property for single-family homes and townhouses, and three feet in height and width and within eighteen inches of the exterior wall in apartments and condominiums.

⁹ *See MO&O*, 17 FCC Rcd at 336 ¶ 8.