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Honorable Greg Walden, Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives
2182 Rayburn House Office Building
Washington, DC 20515

Honorable Anna G. Eshoo, Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives
241 Cannon House Office Building
Washington, DC 20515

Re: H.R. 1301, the "Amateur Radio Parity Act of 2015"

Greetings.

This letter is written in strong support of H.R. 1301, the Amateur Radio Parity Act. The legislation is absolutely critical to the survival of Amateur Radio, one of the best examples of the spirit of volunteerism and public service that exists in America today. I first want to thank the Subcommittee for your consideration of this Bill.

The undersigned has had the honor to serve for the past 36 years as General Counsel for ARRL, the national association for Amateur Radio (formally known as the American Radio Relay League, Incorporated). ARRL is a Connecticut non-profit association which has for the past 101 years represented and advocated the interests of the nation's 735,000 Amateur Radio operators, all of whom are licensed by the Federal Communications Commission to serve the public, especially in times of natural and other disasters. Amateur Radio exists for a number of reasons, principal among which (as the FCC regulations put it) is its value "to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications." The FCC has at times described the Amateur Service as a "model of volunteerism" and a "priceless public benefit."

Amateur Radio operators are not first responders. But in emergencies, and during disasters and their immediate aftermath, volunteer amateur radio operators are ready, willing, able and prepared to provide restoration communications; interoperable communications for first responders which lack that capability; and operations and

logistical support communications for disaster relief organizations and served agencies such as the American National Red Cross and the Salvation Army. We also serve when agencies need additional communications capabilities in order to fulfill their missions, whether or not normal public safety and other land mobile communications systems are still working. Amateur Radio is durable and is not susceptible to the same disruptions caused by disasters as are broadband networks; cellular networks; and even public safety dispatch systems. This is because Amateur Radio does not rely on centralized or decentralized infrastructure. Because of Amateur Radio operators' technical self-training and flexibility, they can and do provide emergency communications with no infrastructure at all. The value of Amateur Radio in disasters is due also to the widespread geographic distribution of the licensees throughout neighborhoods, communities and States and to the residential installations of the stations. There will as the result of those factors *always* be Amateur Radio stations inside and outside a disaster area, capable of providing reliable, immediate disaster relief communications instantly, within or outside the disaster area, over any path distance and to any location whatsoever. The level of organization and preparedness comes from regular drills, exercises and emergency simulations using these residential radio stations and their integration into emergency planning. Emergency preparedness requires actively developing the experiential knowledge of radio and the operating skills a licensee must have in order to be useful during a disaster. This learning requires frequent practice that takes place at a home station during a licensee's personal free time. The operators are certified, having completed emergency communications certification courses that provide the educational background necessary for such serious work, and the stations are maintained within the licensees' residences in a constant state of readiness. This cannot be done without residential, outdoor antennas.

Federal Emergency Management Agency (FEMA) Director Craig Fugate, at an FCC earthquake forum concerning emergency communications planning in 2011, stated that:

“Finally, I have got to get back to Amateur Radio...They are the first ones in the first days getting the word out as the other systems come back up. I think that there is a tendency (to believe) that we have done so much to build infrastructure and resiliency in all of our other systems, we have tended to dismiss that role -when everything else fails, Amateur Radio often times is our last line of defense. And I think at times we get so sophisticated, and we have gotten so used to the reliability and resilience in our wireless and wired and our broadcast industry, and in all our public safety communications, that we can never fathom that they will fail. They do. They have. They will. When you need Amateur Radio (operators), you really need them.”

Amateur Radio is available, ready, willing and able to provide these services at no cost to anyone. As FEMA Director Fugate noted, Amateur Radio operators are always there, using their own radios, on their own frequencies, and “nobody pays them.” Indeed, we will be there “when all else fails.”

The one absolute necessity for Amateur Radio stations to function, however, is some form of outdoor antenna. These need not be elaborate structures with substantial aesthetic impact; but they must be efficient, reliable, fixed antennas and they must be installed in residential areas in order to be usable by licensees on an ongoing basis for emergency drills and exercises, and so they will be ready to be used when the next disaster strikes. Now, some 90 percent of new housing starts in the United States are subject to deed restrictions, homeowners' association rules, and other limitations on the use of land which increasingly make installation of outdoor Amateur Radio antennas impossible.

Private land use regulations are not "contracts" in the sense that there is any meeting of the minds between the buyer and seller of land with respect to them. Rather, they are simply restrictions on the use of owned land, imposed by the developer of a subdivision on all lots in the subdivision when it is first created. If an Amateur Radio licensee wants to buy a home in a subdivision burdened by deed restrictions from either the developer or from an existing resident, that licensee has precisely two options: buy the residence subject to the restrictions, or do not buy the residence. There is no negotiation possible because the restrictions are already in place. Lenders for real estate developments require the declaration of deed restrictions as a condition of funding the development project and the restrictions bind every property in the subdivision.

Deed restrictions, the language of which is propagated from one subdivision to the next, invariably contain one of two types of provisions with respect to antennas: they say either "no outdoor antennas" or "no outdoor antennas without the approval of the Homeowners' Association." In the latter case there are invariably no standards governing when HOA approval might be given or withheld. There is no negotiation possible and therefore no contractual element at all. A person seeking to purchase a residence in a deed restricted community containing the latter type language, even if he or she is aware of the terms of the CC&Rs applicable to the subdivision, cannot know when the property is purchased whether or not any antenna will or will not be approved. In ARRL's extensive experience, the answer to a request made by a landowner of an HOA for approval of any antenna is invariably in the negative. The reason for the negative response is that, no matter how insignificant the aesthetic impact of an Amateur Radio antenna installation, the safest thing for a homeowners' association to do is to deny approval for the antenna, rather than risk criticism from another homeowner.

Often, therefore and ever-increasingly, because of the intensive proliferation of antenna-preclusive private land use regulations, a licensed radio Amateur must purchase property in a deed restricted community and suffer a complete prohibition on Amateur Radio operation due to the covenant language itself or the completely subjective and arbitrary determination of a homeowner's association or architectural control committee as to whether an Amateur Radio station can be operated at all from the licensee's home. With the prevalence of private land use regulations currently, there is most often no choice in the matter. Radio amateurs are increasingly precluded entirely from installing and maintaining any outdoor antenna at all. In an otherwise vibrant, growing public service avocation, the Amateur Service is facing "death by a thousand cuts." FCC has

acknowledged that private land use regulations are used as a means of precluding the use of outdoor antennas. See, Preemption of Local Zoning Regulation of Satellite Earth Stations and In re Implementation of Section 207 of the Telecommunications Act of 1996; Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service; 11 FCC Rcd. 19276, 19301, at fn 12 (1996), [“(r)estrictive covenants are ... used by homeowners’ associations to prevent property owners within the association from installing antennas.”].

The FCC, thirty years ago, found that there was a “strong Federal interest” in supporting effective Amateur Radio communications. FCC also found that municipal zoning ordinances and building codes often unreasonably restricted or precluded Amateur Radio antennas in residential areas. The FCC, in a docket proceeding referred to as “PRB-1” issued in 1985 a Declaratory Ruling which created a three-part test balancing the strong Federal interest in Amateur Radio communications with the traditionally local municipal land use authority. FCC held that State or local land use regulations: (A) cannot preclude Amateur Radio communications; (B) must make “reasonable accommodation” for Amateur Radio communications; and (C) must constitute the “minimum practicable restriction” in order to accomplish a legitimate municipal purpose. This Declaratory Ruling was codified as 47 C.F.R. § 97.15(b). This flexible policy was intended to and did preserve all municipal jurisdiction over antenna regulation, and FCC was very clear that it would not be adjudicating the local land use regulations itself. It worked like a charm: thereafter, municipal land use regulators and Amateur Radio operators sat at a table and cooperatively negotiated ordinances, conditional use permits and variance applications. Today, there is very little adverse interaction between municipal land use planners and Amateur Radio groups or individual licensees.

Thirty years ago, however, private land use regulations were not as prevalent as they are now. Since then, ARRL has repeatedly asked FCC to extend the three-part “reasonable accommodation” test evenly to all types of land use regulations, because it makes logical sense to do so. It doesn’t matter whether the strong Federal interest in Amateur Radio communications that FCC acted to protect in 1985 is frustrated by the preclusion of an Amateur station by zoning or by private land use regulation; the effect is precisely the same either way. FCC has urged homeowner’s associations to apply the “reasonable accommodation” test where Amateur Radio stations were affected. FCC’s Wireless Telecommunications Bureau, in an *Order* released November 19, 1999, stated that the Commission “strongly encourage(s)” homeowner’s associations to apply the “no prohibition, reasonable accommodation, and least practicable regulation” three-part test to private land use regulation of Amateur radio antennas:

“...we ...strongly encourage associations of homeowners and private contracting parties to follow the principle of reasonable accommodation and to apply it to any and all instances of amateur service communications where they may be involved.” *Order*, DA 99-2569 at ¶ 6 (1999).

However, FCC has informed ARRL repeatedly that in order for it to extend the principle of 47 C.F.R. §97.15(b) to include private land use regulations, some guidance from

Congress would be needed. Indeed, it makes no sense whatsoever to apply a reasonable accommodation test to one type of preclusive land use regulation but not another; if there is a “strong Federal interest” in Amateur Radio communications, it does not matter whether those communications are precluded by municipal land use regulations or by private land use regulations. The effect is precisely the same in each case.

H.R. 1301 would do no more than to call upon FCC to extend its “no preclusion, reasonable accommodation, least practicable regulation” test to all types of land use regulation of Amateur Radio facilities. *The Bill does this without taking any jurisdiction or decisionmaking authority away from homeowners’ associations whatsoever.* An Amateur Radio operator living in a deed restricted community would, after passage of H.R. 1301 still have to apply to his or her HOA for authorization to install any outdoor antenna; the HOA could approve or disapprove any given proposal based on aesthetic considerations; and the only obligation that the HOA would have is to not preclude outdoor antennas entirely, but instead to make some reasonable accommodation for an antenna, given the characteristics of a particular parcel of land at issue. There are many, many options for Amateur Radio antennas in residential areas, including some with no aesthetic impact at all, so the aesthetic concerns of HOAs can be protected at the same time that an Amateur Radio operator’s ability to provide public service communications using an efficient, effective outdoor is ensured. ARRL anticipates that this process will be effectuated cooperatively with HOAs at the local level, just as it has worked with municipal land use planners seamlessly for the past 30 years.

FCC declared in 1996, when enacting regulations (as instructed by Congress) to preempt government and private land use regulations restricting the use of over-the-air video reception devices in residential areas (47 C.F.R. §1.4000), that (1) it has the jurisdiction to preempt private land use regulations that conflict with telecommunications policy; and (2) that private land use regulations are related primarily to aesthetic concerns and *it is therefore appropriate to accord them less deference than local governmental regulations that can be based on health and safety considerations as well as aesthetics.* The “reasonable accommodation” policy would nevertheless protect the decisionmaking authority of HOAs and the policy would be administered by HOAs just as municipalities administer it now.

ARRL has recently noted, and you may have heard some material misstatements of fact and disturbingly inaccurate conclusions about H.R.1301 and its Senate counterpart, S. 1685. The claim has been made that this Bill would mandate the authorization of “75 foot towers throughout each community”. The truth is that there is absolutely nothing in the FCC’s 30-year-old reasonable accommodation policy that would mandate or authorize “75-foot towers” “throughout” a community, whether that community is regulated by municipal zoning and building codes or by private land use regulations, or both. Antenna height, configuration and the extent to which an antenna is aesthetically compatible on a given parcel of residential land is now subject to municipal jurisdiction and, should H.R.1301 pass, it would continue to be subject to homeowners’ association jurisdiction as well. The *only* obligation of an HOA within a subdivision regulated by private land use regulations would be the same as that which is applicable to

municipal land use regulators now: the HOA (1) could not preclude Amateur Radio communications; (2) it must reasonably accommodate Amateur Radio communications; and (3) the HOA regulations must constitute the minimum practicable regulation consistent with the HOA's legitimate purpose (i.e. aesthetics). How that is done in each and every case would be left to the good faith discretion of the HOA, just as it is left to the discretion of municipal land use regulators now.

It has also been suggested that this legislation would "prohibit association review or approval" of Amateur Radio "towers and large, fixed antennas." There is nothing in H.R. 1301 which would "prohibit" community association review or approval of Amateur Radio antennas. Nor is there anything that would mandate "radio towers" or "large, fixed antennas." The question in each case, with respect to each parcel of residential real property is what is reasonable with respect to *that parcel*. That decision in every case would be made by the HOA, premised on good faith negotiation with the FCC-licensed Amateur Radio operator. *H.R. 1301 preserves all HOA jurisdiction to review and approve each individual proposed antenna installation.*

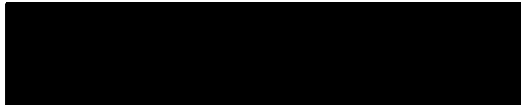
It has been alleged that "H.R. 1301 pre-empts community associations' architectural guidelines and rules related to installation of ham radio towers and antennas" to the point that HOAs "would not be able to require prior approval for 70' ham radio towers and antennas nor would community associations have the ability to create reasonable processes and aesthetic guidelines." That is a complete misrepresentation. The legislation does not preempt HOA's architectural guidelines or rules regarding amateur radio antennas (unless those rules, or the language of the deed restrictions, covenants, HOA regulations or architectural guidelines prohibit outdoor antennas *completely*). An HOA, in the exercise of its normal review processes for proposed antennas, would be obligated only to make reasonable accommodation and to not impose restrictions that are more than what is practically necessary to achieve the HOA's (aesthetic) goal. The HOA would continue to have the authority to require prior approval for any given outdoor antenna installation (just as municipal land use regulators are now able to require prior approval in the form of building permits or conditional/special use permits for antenna installations) and "reasonable processes and aesthetic guidelines" are precisely what the FCC reasonable accommodation policy calls for.

In conclusion, an Amateur Radio station is like a fire extinguisher on the wall. It has to be there and ready when a disaster strikes, and Amateur Radio's resilience during natural disasters and the ubiquitous geographic distribution of the stations in residences and their preexisting readiness are the factors that make the Service valuable when the emergency occurs. Emergency communications are not the only justification for having a functional, operating Amateur station at one's residence. FCC's rules (47 C.F.R. §97.3) set forth numerous Federal objectives for the Amateur Service. Congress has on numerous occasions noted these benefits as well: Public Law 103-408 in 1994, a Joint Resolution to recognize the achievements of radio amateurs, and to establish support for such amateurs as national policy, called for reasonable accommodation for Amateur Radio from residences. It declared that Amateurs are to be "commended for their

contributions to technical progress in electronics, and for their emergency radio communications in times of disaster;” and that the FCC is “urged to make “reasonable accommodation for the effective operation of Amateur Radio from residences, private vehicles and public areas;” and to “facilitate and encourage amateur radio operation as a public benefit.”

H.R. 1301 is critically necessary to the long term survival of the Amateur Radio Service. Our Service provides unlimited opportunities for technical self-training, international goodwill, volunteerism and technical experimentation. It is good for very young people and very old people and everyone who suffers during natural or man-made disasters. It provides a basis for technical careers for many and it advances telecommunications technology. It contributes to STEM education. We are grateful for the many cosponsors of this legislation for their leadership and foresight and we ask for the opportunity to continue our avocation in the public interest for the next 100 years.

Respectfully submitted,



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ARRL, the national association for Amateur Radio