

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
REPORT ON PROCESS REFORM) **GN Docket No. 14-25**

To: The Commission

**COMMENTS OF ARRL, THE NATIONAL ASSOCIATION
FOR AMATEUR RADIO**

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL), by counsel, hereby respectfully submits its comments in response to the *Public Notice* (the Notice), DA 14-199, released February 14, 2014.¹ The Notice requests comment from the public on the *Report on FCC Process Reform*² prepared for the Commission by a staff working group at the request of Chairman Wheeler. The Report was prepared in furtherance of the “goal of having the agency operate in the most effective, efficient and transparent way possible.” It “examines the agency’s internal operations with a critical eye, looking at what the FCC does well and what it can do better, with the aim of improving the overall functioning of the agency and its service to the public.” The Report concludes that the Commission “can and should be more agile and business-like in its operations,” and the Report offers some specific recommendations to help ensure that those improvements are effectuated. ARRL this year celebrates its centennial anniversary. It alone has conducted advocacy efforts before the Commission for the Amateur Radio Service and the hundreds of thousands of active licensees in that Service since the inception of the Agency in

¹ These comments are timely filed, per the *Public Notice*.

² See, Staff Working Group (led by Diane Cornell), *Report on FCC Process Reform*; February 14, 2014 (referred to herein as the “Report”).

1934. Before that, ARRL worked with the Federal Radio Commission in the same capacity. ARRL participates in and/or sponsors several programs in active partnership with the Commission, such as the Official Observer program and the Volunteer Examiner program. ARRL is therefore well-positioned to comment on the Commission's processes. For its comments, ARRL states as follows:

I. Introduction: The Report

1. The fundamental premise of the Report is that changes in the Commission's processes recommended therein, if implemented, would enable the Commission to work faster, smarter, more efficiently, more transparently, and more inclusively. The Report, and the opportunity to comment on it, is welcome from the perspective of licensees in the Amateur Radio Service. Chairman Wheeler is to be congratulated for initiating it early in his tenure at the Commission. It has been ARRL's experience in recent years - more so in the last decade - that the Commission's processes and operations are, in some respects, neither open nor transparent; neither timely nor inclusive. Indeed, the trend has been the adoption of (often unwritten) procedures and policies which have the pronounced, adverse effect of isolating the Commission and its very professional staff from the public regulated by it. Information dissemination in several contexts has been limited severely in recent years. The Commission's staff is often not readily accessible for procedural guidance and responses to informal inquiries (which have been very helpful in the past).³ Staff travel to industry events has been curtailed to the point that there is now very little interaction at industry events with Commission staff at all. The Commission's web site is neither

³ This problem varies by Bureau. Staff in some bureaus and offices are considerably more accessible than in others. In *some* cases, telephone and e-mail inquiries result in delayed responses or none at all.

intuitive nor user-friendly (unlike its predecessor), and it is inadequately updated and managed.⁴ Access to the Commission's offices is limited to a greater extent than in past years. Such access seems, in fact, to be discouraged.⁵ While ARRL has the highest respect for the Commission's staff with which it interacts regularly, there are several circumstances in which the staff is isolated from the industry regulated by the Commission, with significantly adverse consequences. This is most pronounced in the Enforcement Bureau.

2. ARRL's three principal concerns about the Commission's processes, specifically, are as follows: (1) the visibility of the Commission's enforcement program for the Amateur Service is wholly inadequate, resulting in a widespread, albeit inaccurate, public perception that there is no active enforcement in our Service; (2) the Commission's policies for adjudicating certain classes of interference complaints, most notably power line interference cases (but others as well) create no incentive whatsoever on the part of regulated entities whose facilities generate that interference to resolve it; and (3) the timing of resolution of rulemaking proceedings. Resolution of petitions for rule making and open dockets, especially spectrum allocations proceedings, is all too often a multiple-year process. This is simply not responsive to the needs of the Commission's licensees and regulated entities, and it is a disincentive to technological development nationwide and in some respects worldwide. Each of the problems referenced above has negative ramifications for the Amateur Radio Service. Raising these issues in this context, however, does not constitute criticism of the performance of any individual member of the Commission's staff or of the leadership or management of any specific Bureau or Division. Rather, the following remarks are directed at the Commission's policies and processes. It is

⁴ This is a widely shared criticism. Many industry representatives with whom ARRL has consulted about this are in agreement. The simple fact that the old web site has been maintained long after the "new" web site was launched is a testament to the lack of confidence that the Commission has in its own web design.

⁵ Evidence of this is the elimination of "frequent visitor" badges for access to the Portals building and the difficulty in scheduling meetings at the Commission's offices, which takes weeks in some cases.

recognized that the issues discussed hereinbelow result, in large part, from the unenviable necessity of allocating scarce (and in some cases inadequate) human resources available to the Commission.⁶ ARRL has utmost respect for the individual members of the Commission's professional staff involved in Amateur Radio regulation,⁷ and it is well-known that some of the Commission's staff, most notably perhaps in the Office of Engineering and Technology, have huge workloads and too few people. Notwithstanding, it is ARRL's view that the Commission can do better in certain respects in the areas of accessibility, transparency, efficiency and staff empowerment, because, in the past, it *has* done notably better in those respects, as is more fully discussed below.

3. These comments do not track the chapters of the Report because the recommendations herein are not, in general, related directly to the recommendations in the Report. However, two of the stated goals of the Report in particular, and one of the staff recommendations are, in ARRL's view, spot on and do relate specifically to the comments herein: It is timely to improve the efficiency and effectiveness of the agency's conduct of its business in some respects. It is

⁶ Most recently, on March 25, 2014, Chairman Wheeler gave testimony about the Commission's Fiscal 2015 Budget Proposal to the Subcommittee on Financial Services and General Government Committee on Appropriations of the House of Representatives. In that testimony, in speaking of the difficult effects of necessary cost reductions, the Chairman stated that:

These cost reductions had real consequences. We have been unable to replace our Office of Engineering's Equipment Authorization System, and at this year's Consumer Electronics Show, I heard complaints about how sequestration's impact had slowed the approval of new products before last year's holiday shopping season. Cuts in employees left us chronically understaffed in enforcement, for example, so that our work to police pirate radio activities suffered – a big concern among some broadcasters – as we focused all available resources on public safety and homeland security activities. Likewise, we never replaced or upgraded our enforcement equipment. In fact, we have more than 200 relic IT systems that are costing the agency more to service than they would to replace over the long term.

Because of the resource limitations in the area of enforcement, it is critical to maximize the deterrence value of the enforcement actions taken in all radio services. In the Amateur Service in particular, as is discussed below, deterrence based on visibility is a critical component of a successful compliance campaign.

⁷ In fact, as noted below, a major problem in the Enforcement Bureau (other than the attrition through retirement of large numbers of exceptionally competent and skilled staff members) is that there are policies of the Bureau that constrain the remaining, dedicated staff members, such as multiple layers of approvals for even routine correspondence and compliance actions which stifle their efforts and delay actions necessary to build deterrence.

urgent to process some items before the agency more quickly and more transparently than heretofore. Finally, in the context of improving the management of the Agency, the Report's recommendation "to ensure that staff and management within the agency have the tools they need to function at optimal efficiency" is welcome. In the context of staff involved with enforcement in the Amateur Radio Service, the tools these capable people need to function at optimal efficiency have, in recent years been withdrawn. It is past time to re-empower the staff so that they can perform their work efficiently and on a timely basis.

II. Enforcement in the Amateur Service is Insufficiently Visible

4. There is a long history of rule compliance in the Amateur Radio Service. The licensees are, with very few exceptions, scrupulous about rule compliance. This widespread attitude is critical in a Service in which virtually all frequencies in all bands are shared among licensees at all times; where there is no exclusive channel use; and where there is long distance, often worldwide propagation at any given time.

5. Few Commission resources are needed under normal circumstances in order to ensure rule compliance in the Amateur Service, due to the well-understood common goals and a long tradition of cooperation among Amateur licensees in the use of shared spectrum. However, also because of the facts of shared spectrum and long-distance propagation, a very few rule violators are very visible in this Service. In the case, for example, of malicious interference, the longer an interferer is allowed to perpetrate this offense without visible sanctions being levied on that person, the more the violator is encouraged to continue the violative behavior and the more likely others may be to emulate the violator. Conversely, the faster and more visibly the Commission acts to stop that behavior, the greater the deterrence for violators and the greater the disincentive to potential violators to do the same thing. Given these facts, the Amateur Radio Service is

virtually unique among Commission-regulated radio services in *welcoming* visible enforcement. Because of the high level of self-regulation in the Service, very little Commission enforcement is needed relative to the large number of Commission licensees. However, what little enforcement is necessary must be (1) timely, and (2) visible.

6. Therefore, a major underpinning of this highly compliant service is the *perception* of an active enforcement presence that creates deterrence and promotes compliance. The proof of this is in the notable success of the Amateur Radio compliance program between 1998 and about 2008. The circumstances were as follows. In 1998, the Compliance and Information Bureau (now the Enforcement Bureau) assumed the responsibility of enforcement in the Amateur Service which had theretofore been the province of the Wireless Telecommunications Bureau. WTB's enforcement efforts, by 1998, had been an abject failure for more than 12 years. Resources in that Bureau permitted focusing on only a very few major cases (one case per year was what the Amateur Service was informally "allotted," and there was virtually no visibility of even this completely inadequate level of enforcement). The WTB policy resulted in a gradual increase over a period of years in instances of continuous, ongoing malicious interference at various places throughout the United States, and as well a steady stream of Congressional inquiries and complaints to the Commission about unresolved, very disruptive rule violators, the identities of whom were well-known. Malicious interference cases went unaddressed by WTB for years at a time. The Commission's Public Notice of September 25, 1998, Report CI 98-17, Appendix 1 transferred all enforcement, from initiation to resolution, to CIB. Through the innovation and energy of Mr. Richard Lee (Bureau Chief of CIB at the time), an aggressive enforcement program was commenced that focused on visibility of the Commission's actions, and the deterrence created by that visibility, rather than by any extensive use of staff resources in

license revocations or suspensions or monetary forfeitures. The program was 100% complaint-driven and it was immediately, extremely successful because of the visibility of a single member of the Commission's staff at Amateur Radio events, and in written correspondence to alleged violators, all of which was released to the Amateur Radio media and widely publicized. In the first two years of the CIB revitalized program, more than 6,000 letters of thanks were received by the Commission from radio amateurs expressing gratitude for the new program. It worked very well from 1998 through 2008 when the staff member charged with administering it retired from the Commission. By that time, deterrence had increased to the point that Amateur Radio rule compliance reached what was widely perceived to be a historically high level.

7. Compliance during those years was achieved so thoroughly successfully, largely because of (1) the visibility in the Amateur Radio community of a single member of the Commission's Enforcement Bureau staff at Amateur Radio events; and (2) as he put it, "making available to the Amateur Radio media everything" that was done by that office except where privacy rights would be violated or confidentiality had been requested. The program was inexpensive to operate because it was complaint-driven and because the Amateur Service is generally self-policing. Tools used were public warning letters, suspensions, short-term renewals, letters of inquiry, admonitions by letter and e-mail, removal of automatic control privileges for Amateur repeaters, re-examinations where a license examination might have been compromised, and telephone dispute resolution efforts. Station inspections were rare, and monetary forfeitures, license revocations and renewal hearings were largely unnecessary and almost non-existent. The program, however, was absolutely dependent on a reasonable level of autonomy of the Commission's EB staff member charged with Amateur Radio enforcement, and

especially on the ability to provide information to the Amateur Radio community of what is actually being done.

8. In 2008, when the staff member charged with Amateur Radio enforcement retired from the Commission, there was a hiatus in the appointment of his successor. Ultimately, his successor was hired in February, 2009 to continue the Amateur Radio enforcement program. However, the Amateur enforcement program around that time that time became and is now subject to a number of severe constraints that were not imposed early in the CIB/EB Amateur Radio enforcement program. These constraints have had a *devastating* effect on the entire philosophy of the program and its success. First of all, there are extensive approvals at the Bureau level required before any substantive correspondence can be released. That approval has apparently been difficult to obtain in recent years, at least on any kind of timely basis.⁸ The EB staff person principally charged with Amateur Radio enforcement is not empowered to issue any documents over that person's own signature other than warning letters. The Commission's staff, in order to return this program to the level of success it formerly enjoyed, will have to afford to this staff person a greater degree of autonomy than has been permitted to the position in recent years.

9. Much worse, those enforcement actions that are taken are not released to the Amateur Radio media and therefore cannot now be adequately publicized. It is our understanding that a determination was made that publicizing Amateur Radio enforcement actions other than final

⁸ These "checks and balances" imposed on Enforcement Bureau staff have led to very substantial delays in responding to and resolving interference cases. One very disruptive and continuous malicious interference case involving a repeater in the metropolitan area of New York, for example, has not been resolved for more than two years. This has *encouraged* other rule violators, and the problem has escalated during that time. The problem is even more visible in the High-frequency (HF) bands. A current example, involving racially-based malicious interference to an Amateur Radio network of stations in the Southwest (in the 3.5 MHz band) has gone unresolved for several years. Had either of these cases been resolved timely, the deterrence effect would have been multiplied because of the large number of radio Amateurs adversely affected by it regularly. Only a few visible enforcement cases produces a high level of compliance, as was proven by the success of the program between 1998 and 2008.

adjudications somehow constitutes a violation of privacy rights of individual licensees, so there can no longer be a listing of names or addresses in released warning letters sent by EB to licensed radio Amateurs. This deprives radio Amateurs of the knowledge that the Commission is indeed investigating and responding to a given enforcement problem. The result is the perception that nothing is being done in a given case, and frustration builds rapidly among the radio Amateurs who have to endure the rule violator on an ongoing basis. It is well-understood that there is a limit to the transparency of ongoing Commission enforcement investigations. However, *the limitations imposed on the visibility of enforcement actions in recent years have significantly reduced the effectiveness of the program.* Moreover, the circulation of enforcement actions to Amateur Radio media, and the publicity that resulted from the practice was a critical component of the deterrence of non-compliant behavior in the Service. The cessation of that practice has reduced the visibility of the program and it has directly resulted in notable and unacceptable increases in rule violations, most especially malicious interference.

10. At present, the only postings of Amateur Radio enforcement actions are on the Commission's web site(s).⁹ These include redacted warning or "inquiry" letters, letters pertaining to Radio Frequency Interference (RFI) cases, and call sign issues. The problem, in addition to the redactions, is that the listings are consistently, woefully out-of-date and they are not maintained or presented well at all. As of this writing, in late March of 2014, the most current Amateur enforcement action listed on the Commission's old web site is dated August 12,

⁹ There are in fact two FCC web sites and two separate listings of Amateur Radio enforcement actions maintained: one is part of the older, legacy (so-called "transition") web site [See, <http://transition.fcc.gov/eb/AmateurActions/Welcome.html> (last visited March 25, 2014)], the other appears on the "newer" web page [See, <http://www.fcc.gov/encyclopedia/eb-amateur-radio-service-enforcement-actions> (last visited March 25, 2014)]. Overall, the Commission's "new" web site has met with a great deal of disfavor among individuals and companies since it was launched several years ago. But the point is that each of the two separate lists of Amateur Radio enforcement actions maintained is many months behind in being updated. The lack of information flow creates the mistaken impression that the posted items were the most recent enforcement actions of the Commission in the Amateur Service.

2013, six months ago. The most recent enforcement action listed on the “new site” is updated through March of 2012, *two years ago*. The inference that anyone unfamiliar with the Amateur Radio enforcement program would take from this is that there have not been any actions taken by the EB staff during the past 7 months, or two years, depending on which listing one consults. This bolsters the widespread belief that the Commission is really no longer serious about enforcement in the Amateur Service. The fact that there are two separate listings of Amateur Radio enforcement actions on two separate FCC web sites is, frankly, ridiculous in any case.

11. There is a total ban on industry-sponsored travel for Commission staff. This, and the unpleasant fact of the Commission’s very limited travel budget, precludes Commission staff travel to Amateur Radio gatherings and conventions to speak, further limiting the visibility of the enforcement program, which in turn limits deterrence. In the past, travel expenses for Commission staff could be reimbursed by nonprofit entities. Because it was popular in the Amateur Radio community to have Commission staff involved in the Amateur Radio enforcement program speak at conventions and events, this was a workable means of allowing the Commission to put a “face” on the program and to demonstrate its commitment to rule compliance in the Amateur Service. Ideally, nonprofit entities should be permitted to reimburse Commission staff travel expenses in certain contexts. But if this is not to be, then modern telecommunications technology should be invoked, so as to at least allow Commission staff to appear at Amateur Radio gatherings via videoconferencing, or to participate in webinars that would allow the enforcement program to become visible once again. It is necessary to permit the EB staff the discretion to agree to such appearances, and for the staff to be encouraged to do so.

12. ARRL has since the mid-1980s sponsored a legislatively authorized¹⁰ “Official Observer” program that the Commission has implemented pursuant to a series of written agreements which provide for a large number of ARRL-appointed and trained volunteers to monitor Amateur frequencies for compliance issues and to provide that evidence to the Commission. In the main, this program functions as a self-regulatory process within the Amateur Radio community. In the case of minor rule infractions, informal notices are sent by trained Official Observer stations (“OOs”) [under the supervision of trained Official Observer Coordinators (OOCs) appointed by ARRL] to persons who have been heard to have unintentionally violated a minor rule. In those cases, the Commission is not involved, and the notices sent are in the nature of helpful reminders. However, in serious or repeated rule violation cases, recordings of on-air communications of the perpetrator are made by these “OOs” and sent to ARRL and to EB staff, along with notations of times, frequencies and, if known, the likely location of a rule violator, determined by direction-finding techniques. While the information gathered by OOs is not used directly as evidence by the Commission,¹¹ it does allow prediction of times and days a particular rule violator might be operating and patterns of rule violations, so that Commission staff can without wasting time focus their evidence-gathering effort for maximum efficiency. The program is referred to as the “Amateur Auxiliary” to the FCC in agreements with the Commission, but the simple fact is that there is very little communication between the Commission’s EB staff on the one hand and the OOs, OOCs and ARRL staff that

¹⁰ See, 47 U.S.C. § 154(f)(4)(B).

¹¹ It is unclear why none of the evidence gathered by OOs is usable other than as a predictor for Commission District Office staff to use in investigating the matter themselves – if and when their time permits. OOs are trained in evidence gathering and chain-of-custody issues before being appointed by ARRL. Some OOs are skilled in direction-finding. The program is authorized by legislation. It would increase the Commission’s efficiency if the work of these volunteers were put to a better use.

administers the program on the other hand. At this point the program is not being efficiently or effectively used by the EB.

13. ARRL is aware that there have been large numbers of recent retirements among District Office staff, leaving some of those offices overworked and understaffed. The result of this has been that Amateur Radio enforcement cases are allowed to languish for years at a time, because understandably, a process of prioritization of cases has had to occur, and safety-of-life issues must of course be at the top of that priority list. It is clear that there will be some delay in responding to even the most egregious Amateur Radio malicious interference or indecency case because of resource limitations.¹² However, what is not clear is why the Commission's practices fail to take advantage of the resources that are available to them and have been for many years. In more than one case, a chronic rule violator has been the subject of hundreds of hours of OO recordings of transmissions reported to the Commission, but the violator has been allowed to continue those activities for periods of years without more than a warning letter from the Commission's staff (which in some cases have no effect at all). No use was made of any of the OO recordings in these cases, and no use was made of the OOs because there was no dialog between the Commission's EB staff and those OOs about the progress of the cases. Because the District Office with jurisdiction in the areas in question cannot in many cases dedicate their limited resources to address the matter on a timely basis, the volunteer OOs who do the on-air monitoring and evidentiary information preparation become disillusioned; they feel that their extensive work is for naught, and they resign from the OO program. If the Commission is not going to make use of the recordings made by these dedicated volunteers, they should at the very least be told to stop their efforts in a given case. If no such message is ever conveyed to them (or

¹² Because of this fact, the Commission must immediately increase the visibility of the enforcement cases that are being acted on, to maximize the deterrence effect therefrom.

to ARRL), from the Commission, however, the volunteers will be unwilling to continue the work. Without some visible Commission response to the work of these volunteers, some direction or guidance as to what to do in a particular case, and at least some feedback from Commission staff, that volunteer program cannot continue and an otherwise potentially valuable volunteer resource is being wasted.

14. The lack of dialog between the Commission's EB staff and those radio amateurs who report (and suffer) interference, whether or not part of the OO program, creates frustration. In the New York City area, ongoing, regular interference to an Amateur Radio repeater over a two-year period has led to repeated status inquiries from those who have reported the interference to the Commission initially. The sum total response to these inquiries has been the repeated statement that "the investigation is ongoing". Because of the expectations built up in the Amateur Radio community during the period 1998 to 2008, the long-pending delays in resolving visible cases, coupled with virtual silence from the EB staff is viewed as indicative of the current state of Amateur Radio enforcement and it results in widespread dissatisfaction among radio amateurs. This dissatisfaction is understandable and should trigger some modifications to the program. While the situation is not as bad as it was prior to 1998, there has been in ARRL's experience a marked increase in rule violations recently. We hope that the Commission will work with ARRL to restore the necessary visibility to this important program; increase transparency in the administration of it; to use volunteer resources to better advantage; to communicate better with the Amateur Radio community; and most especially, to give to the Commission's very professional staff the level of autonomy, the authority, the tools and the encouragement to conduct the program the way it was conducted between 1998 and 2008. ARRL is not urging a significant increase in the dedication of resources to Amateur Radio enforcement but it does ask

that the person charged with the task be released to the greatest extent possible from any unnecessary constraints placed on those efforts. ARRL and its volunteers should be permitted to assist to the greatest extent possible in order to improve the level of deterrence that exists in the Amateur Service and to reverse a disturbing downturn in compliance, and we need to maximize the deterrence value of the work already being done now.

III. The Commission's Response to Power Line Interference Cases is Insufficient and Inadequate

15. Of particular concern to ARRL is the Commission's inaction in the 40 or more pending cases of serious power line interference to Amateur Radio operators, making communications for those persons at their residences impossible for large parts of the year on many frequency bands. In some cases, these have been impossible to resolve due to the refusal of the power utility to cooperate in the resolution of high radiated noise levels from the power lines. There is an informal ARRL/FCC cooperative agreement at the staff level for handling these cases, so as to minimize the impact on Commission resources. Initially, ARRL technical staff works cooperatively with an Amateur Radio complainant and the power utility to arrange for proper testing of power line noise and to attempt to address these problems as they arise. ARRL staff has invested many thousands of hours in diagnosing and attempting cooperative resolutions to some of these cases, but in general those cases tend to continue for long periods of time, because (1) power utilities do not in many cases appear to have staff to deal with radio frequency interference (RFI),¹³ and (2) utilities typically will not dedicate resources to address these problems because there is no perceived financial benefit to them to do so, and because the Commission has taken a complete hands-off approach in terms of enforcing its Part 15 rules in these cases, so they are not compelled to fix the problems. It is well-known to power utilities that

¹³ This is something that ARRL has offered to help remedy. ARRL technical staff has offered to help train utility company staff in identifying power line interference. The offer has seldom been accepted.

there has been and will be no effective Commission enforcement action. In one case in particular involving an electric utility in Lakeland, Florida which has been pending for more than ten years, the Commission's EB staff issued letters to the utility. The utility has essentially stonewalled on this case, and yet there has been no sanction imposed whatsoever, at any point. The EB has approximately 40 active interference cases involving electric utilities, most many years old (some a dozen years old) and yet *not one* electric utility has been sanctioned for violating applicable Part 15 rules. Deterrence works in this context just as it does in the case of Amateur Radio rule violators: a few enforcement actions against recalcitrant utilities which have, in the view of Commission EB staff, failed over a long period of time to remedy a problem of this nature and have refused to cooperate will result in cooperation in the remainder of the cases. Instead, power line interference cases are typically allowed to languish for four years or more, and some have been open and unresolved for 12 years.

16. The EB has adopted (again, without any notice to the public) a procedure that appears deliberately intended to mask the failure to address power line RFI cases. If a case of interference from a power line is reported by ARRL to the Commission as being one that cannot be resolved cooperatively, and if in response the power utility reports that it is working cooperatively with the radio Amateur, the Commission considers that an inactive case and will take no action. A second complaint from the same or a different radio Amateur will start a new case and the cycle is repeated in an endless loop, without any necessary resolution of any of the complaints, and in fact without any actual remedial action taken by the utility at all. While that process may make it appear that the Commission is responsive to power line RFI complaints and is resolving cases, the truth is that the Commission has not resolved any of those cases over a

period of many years.¹⁴ ARRL's cooperative efforts have been successful in some cases, but those recalcitrant power utilities which refuse to cooperate in RFI resolution blithely violate the Part 15 regulations and do so without any repercussions whatsoever.

17. The Commission is quick to rely in rulemaking proceedings on the clear regulatory obligation of the operator of Part 15 intentional or unintentional radiators to avoid creating harmful interference and to tolerate any interference received. However, the Commission has illustrated either a great reluctance to address cases of serious interference from electric utilities, or else an inability to do so due to resource limitations. Either way, as a practical matter, reliance for spectrum compatibility on the non-interference provisions of Part 15 of FCC rules is an illusion, purely and simply. The Commission should dedicate some enforcement resources to power line interference and address some decade-old interference cases so that electric utilities are given some incentive to comply with their Part 15 non-interference obligations. Selective enforcement is not the hallmark of a transparent, responsive agency.

IV. Petitions for Rule Making and Open Dockets Should Be Resolved Timely

18. Some docket proceedings at the Commission are allowed to sit unresolved for years at a time. The same is true with filed Petitions for Rule Making. Some examples are as follows: On March 15, 2011, ARRL filed a Petition for Rule Making seeking modification of Part 97 of the Commission's Rules in order to permit the use of single and multiple time-slot Time Division

¹⁴ It is unclear why the Commission is reluctant to enforce its non-interference rules in the case of violations by electric utilities. ARRL has files of more than 1,000 power line RFI cases to which its staff has dedicated significant time and resources. In *none* of these cases, some of which dragged on for a decade or more, has the Commission issued a Notice of Apparent Liability or assessed a monetary forfeiture or other sanction. In addition to the virtual absence of any Commission enforcement actions over a period of many years in cases of power line noise, the Commission also refused to take any enforcement actions against the operators of numerous broadband over power line (BPL) systems during the past ten years which caused severe, documented interference to Amateur Radio stations. The interference continued over periods of years, during which the Commission took no action to resolve BPL interference complaints in numerous cities. Only the cessation of BPL operation solved the problems. It is understood that during much of this time, the Commission was, as a political matter, acting as a cheerleader for this (ultimately failed) technology, and consistently refused to acknowledge its blatant shortcomings. There is *no excuse*, however, for the refusal to take action over long periods of time in a case of serious, harmful interference over wide geographic areas and in very wide bandwidths of HF spectrum.

Multiple Access (TDMA) technology in the Amateur Service, in view of the fact that such technology was in active use in the land mobile radio service and had been for years. That Petition was included in WT Docket 12-283 with some other unrelated petitions dealing with Part 97 rules. The Notice of Proposed Rule Making was issued October 2, 2012, more than a year and a half later, and the Docket proceeding is still open, three years after the Petition for Rule Making was filed.¹⁵ While the Wireless Telecommunications Bureau did issue a temporary waiver permitting experimentation with TDMA technology *pendente lite*, the absence of any permanent authorization has stifled Amateur Radio experimentation with it, despite its widespread acceptance and ongoing commercial use by Part 90 licensees.

19. In another instance, ARRL filed on March 13, 2006 a Petition for Rule Making seeking to modify the Part 97 Amateur Radio Service Rules to encourage experimentation with Spread Spectrum (SS) emissions by permitting slightly higher transmitter power and to eliminate an automatic power control requirement that was difficult or impossible to implement. The Commission released a Notice of Proposed Rule Making to implement the proposed rule changes in WT Docket 10-62, on March 16, 2010. It should not have taken the Commission four years to act on this Petition for Rule Making. The rules were finally amended March 4, 2011 by a Report and Order. Therefore, it took the Commission five years to resolve a very simple, very minor regulatory change in the Amateur Radio Service Rules which was intended to increase experimentation in this largely experimental radio Service and which had little or no substantive opposition.

¹⁵ In the Wireless Telecommunications Bureau, Amateur Radio petitions for rule making and dockets are inconsistently adjudicated. On November 15, 2013, ARRL filed a Petition for Rule Making seeking to eliminate an unnecessary and outdated regulatory limitation on Amateur Radio digital data communications experimentation. The Petition was placed on public notice and public comment was solicited *less than a week after it was filed with the Commission*. This noteworthy level of responsiveness is greatly appreciated.

20. Docket proceedings and Petitions in the Office of Engineering and Technology pertaining to Amateur Radio fare no better. ARRL filed a Petition for Rule Making on November 29, 2012 seeking to amend Parts 2 and 97 of the Commission's Rules to implement the Final Acts of the 2012 World Radiocommunications Conference by creating a new Amateur Radio allocation at 472-479 kilohertz. To date, a year and a half after it was filed, this Petition for Rule Making has not been afforded a file number, nor has public comment been solicited on it. Reportedly, OET plans to incorporate ARRL's proposal (via a further notice of proposed rule making) in an ongoing Docket proceeding (ET Docket 12-338, *a docket intended to implement the WRC-07 Final Acts*), which was initiated pursuant to a November 19, 2012 Notice of Proposed Rule Making. That proceeding is still open as well. It is unclear when ARRL's Petition for Rule Making will be ultimately adjudicated, but there has been literally no progress since the filing of the Petition, almost one and one-half years ago.

21. Long delays at OET in resolving rulemaking proceedings involving Amateur Radio allocations are typical. ARRL filed on October 16, 2006 a Petition for Rule Making seeking to make changes in an existing allocation in the 5 megahertz band consisting of five discrete operating channels. This Petition had already been vetted with NTIA, which was necessary because as it involved the use of shared government and nongovernment spectrum. NTIA's approval of the proposed rule changes by letter were incorporated in the Petition filed in 2006. OET relatively promptly put the Petition out for public comment in December of 2006, and comments were received from the public on the Petition. At that point, nothing happened until May 7, 2010 – three and one-half years later – when the Commission issued a Notice of Proposed Rule Making (ET Docket 10-98) proposing the changes sought by ARRL in the Petition. Then, finally, on November 18, 2011, five years after ARRL filed its NTIA-

preapproved Petition for Rule Making, the Commission issued an order granting the relief requested.

22. While this is neither efficient nor responsive, it is understood that the staff at both OET and WTB are engaged in numerous projects involving broadband rollout, and that there is currently a good deal of pressure on the Commission to resolve matters associated with the implementation of the National Broadband Plan quickly. It is also understood that OET has limited resources to complete a heavy workload in that area, and that in terms of priorities, the Amateur Service is not at the front of the line. ARRL expects no different prioritization. But it cannot be necessary to postpone dockets and adjudication of Petitions for Rule Making for three or more years at a time in *any* radio service, and licensees in the Amateur Service reasonably expect more timely adjudications in rulemaking proceedings than the Service has been afforded during the past decade.

23. Despite the unreasonably long delays occasionally suffered by the Amateur Radio community in the resolution of dockets and petitions for rule making, ARRL is unconvinced that the best method of insuring more rapid resolutions is by the establishment of an arbitrary “shot clock” deadline for resolving petitions and docketed rulemaking proceedings. Because of the plethora of issues facing, for example, the OET staff (some of which entails the implementation of legislation that includes mandatory timetables), there is obviously going to have to be a prioritization process. Some items will receive a high priority for adjudication, and the remainder languishes longer. While that is an unfortunate circumstance, imposition of an arbitrary shot clock for docket or petition resolution will, without any other changes, likely result in dismissal without action of filed documents, the age of which are approaching the shot clock deadline. What would be helpful instead, as is discussed in the Report, is a comprehensive status listing,

posted on the Commission's web site, informing the public precisely where in the adjudication process a particular petition or notice of proposed rulemaking is at any given time, and an anticipated resolution date. Draft items that are awaiting review by Bureau staff (or which are in the drafting process) should be listed as well as the date the draft is anticipated to be or was provided to the editorial staff in the Bureau's front office. This would complement the very helpful listing that currently exists on the Commission's web site of items on circulation among the Commissioners.

V. International Bureau Staff and the Private Sector Should Have Opportunity To Comment on Conference Proposals Adopted After the Relevant Advisory Committee's Mandate Concludes

24. ARRL commends the staff of the International Bureau for their high level of competence, efficiency, and transparency in the conduct of preparatory work for International Telecommunication Union meetings and conferences, as well as meetings of regional telecommunications bodies. The procedures of the International Bureau are successful in achieving consensus on a surprising number of issues that come before it. Even when parties are disappointed in a result, they do not feel as if they have not been heard.

25. The World Radiocommunication Conference Advisory Committee (WAC) functions particularly well, and International Bureau Staff is to be commended for their guidance and facilitation of the advisory committee's work. During the time period the advisory committee is chartered, it serves as a forum for the private sector to advise the Commission on positions for the United States to adopt. Importantly, it provides the *only* forum in which the private sector may provide advice on the content of proposals coming from federal agencies, operating through the Radio Conference Subcommittee (RCS) of the NTIA's Interdepartment Radio Advisory Committee.

26. This procedure works well while a WAC is chartered. At some point, however, the charter of the WAC expires, and often does so with FCC and federal agency positions on some conference agenda items unresolved. When this occurs, the subsequent process for adoption of proposals should provide notice to affected United States private sector stakeholders and an opportunity to be heard. This is usually accomplished through procedures of the State Department's International Telecommunication Advisory Committee (ITAC), in which proposals are circulated for vetting prior to adoption.

27. Through no fault of the International Bureau staff, this procedure was not followed on one agenda item during the preparation cycle for WRC-12.¹⁶ This was a single exception, but was nevertheless a substantial departure from accepted processes, and allowed a proposal to be advanced to WRC-12 with no private sector vetting whatsoever. ARRL anticipates and would appreciate the International Bureau staff taking all practical measures to ensure that post-WAC proposals are appropriately circulated, particularly proposals on which the private sector has had no opportunity to comment. While the finalization of proposals is the responsibility of the State Department, Commission staff often plays a vital role in monitoring and ensuring compliance with procedures, particularly at late stages where private sector interests have little or no access to discussions.

VI. Transparency

28. There is one other issue that deals with the transparency of the Agency that should be mentioned. The Commission must scrupulously adhere to its own Sunshine Act procedures and obligations. In general, in ARRL's experience, the Commission does this. One notable

¹⁶ The RCS proposal on agenda item 1.15, addressing HF oceanographic radar, was never submitted to WRC-12 Advisory Committee despite it being dated before the expiration of the Advisory Committee's charter. The RCS proposal was subsequently adopted as the United States position without ever having been disclosed to private sector interests. *See* Letter from Kay Craigie to S. Decker Anstrom, May 26, 2011, *available at* http://www.arrl.org/files/media/News/Anstrom_Letter052611.pdf.

exception, however, which occurred almost ten years ago, triggers this observation now. ARRL was constrained in October of 2004 to take the unusual step of moving to recuse then-Chairman Michael Powell from further participation in an open docket proceeding dealing with Broadband Over Power Line Systems, and specifically from any participation in the Commission's deliberations concerning a draft Report and Order in the proceeding, scheduled for consideration the next day at a scheduled Commission Open Meeting.

29. Section 1.1203 of the Commission's Rules, 47 C.F.R. § 1.1203, prohibits all presentations to decision makers concerning matters listed on a Sunshine Act Agenda, whether *ex parte* or not, during the period from the release of the public notice that a matter has been placed on the Sunshine Act agenda until the Commission releases the text of a decision or order relating to the matter, or until the Commission releases an order deleting that item from the Sunshine Act Agenda. The Commission, on Thursday, October 7, 2004, released a Sunshine Act Agenda for its Open Meeting on October 14 of that year. The first item on that agenda was consideration of a draft Report and Order in Docket 04-37, the Broadband over Power Line (BPL) proceeding. However, at a demonstration of BPL technology on Tuesday, Oct. 12, 2004, then-FCC Chairman Powell and Federal Energy Regulatory Commission Chairman Pat Wood, III were in attendance to view first-hand the BPL services offered by the City of Manassas, Virginia, which at the time was one of the municipalities to offer BPL. A news release about this event noted that "the two chairmen will see the capabilities of BPL for Internet service, VoIP and utility and public works functions." ARRL moved to recuse Chairman Powell from the BPL proceeding, arguing that the presentation was to occur only two days prior to the scheduled Sunshine Act Agenda meeting, which was clearly within the period in which presentations to decision-making personnel are prohibited by the Commission's Rules. Because the presentation

included a discussion by Chairman Powell concerning interference from BPL to licensed radio services (one of the main issues for resolution in the docket proceeding), Chairman Powell either knew or should have known that his participation in that presentation was in clear violation of Section 1.1203 of the Commission's Rules, and his consideration of a Report and Order in this proceeding was irrevocably tainted. The Commission summarily denied this motion.¹⁷ However, it was an obvious and direct violation of the Commission's procedural rules. The Commission's decision-making process must not only be fair, it must be perceived as fair also. It is sincerely hoped that actions like that outlined above will be scrupulously avoided in the future.

VII. Conclusions

30. The Commission's candid process of self-examination in the development of the Report and the opportunity to comment on it is both valuable and welcome, and Chairman Wheeler is to be congratulated for initiating it. ARRL's comments herein, though specifically related to the successes and failures of the Commission's processes and procedures that affect the Amateur Radio Service, are offered with only constructive intent. They reflect ARRL's status as the only national representative of the Amateur Radio Service and 100 years of experience. The Amateur Service prides itself on its self-regulatory traditions and its spirit of volunteerism, and radio Amateurs have no intention of increasing the very light regulatory burden on the Commission that they have historically presented to the Agency. That said, however, the Commission, for its part, must improve the processes and procedures that it has unwisely imposed on its dedicated, professional staff in the Enforcement Bureau, in order to return the Amateur Radio compliance program to its historically successful levels. This does not require more resources. It requires empowerment of the staff in charge of the program and it requires

¹⁷ The assertion was that because the Chairman had "requested" the presentation, that somehow exempted it from the Sunshine Act rule. The argument is not substantiated anywhere in Commission jurisprudence.

transparency and visibility in the Commission's actions, in order to allow the work of the staff to become more visible. If this is done, ARRL firmly believes that even fewer Commission resources than are now called for will be necessary in the near future in order to reach a maintenance level of rule compliance in the Amateur Service. Visibility of Enforcement Bureau staff, and visibility of their actions, are the keys.

31. The concepts of visible enforcement and deterrence should also be brought to bear in the area of power line interference cases in particular and Part 15 interference in general. The enforcement Bureau's processes are currently kept under a shroud of secrecy and interference cases are closed without actual resolution of the underlying problem. This has to change. Power line interference is a devastating problem not only for licensed Amateur Radio operators; it is also a major contributor to the economic woes of AM Broadcast radio, because listeners will not suffer AM radio noise. They will simply utilize other media.

32. Finally, the Report makes good recommendations to address the sometimes years-long delays in resolving filed petitions for rule making and open docket proceedings. In Amateur Radio proceedings, the delays are multiple years long. It cannot be necessary for a simple Part 97 modification proceeding to take 5 years to adjudicate, even with the understandably necessary process of prioritization that attends the high workloads of OET and WTB. In any case, a "shot clock" approach to this is not necessarily the answer, as that might lead to dismissal of otherwise meritorious rulemaking proposals simply because the staff has run out of time to consider them. It is useful to keep the public informed in detail about the progress of a particular rulemaking proceeding, even if the progress is slow in some cases.

Therefore, the foregoing considered, ARRL, the national association for Amateur Radio,

respectfully requests that the Commission take further action to modify and improve its processes and procedures as recommended herein.

Respectfully submitted,

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