REPORT OF THE GENERAL COUNSEL TO THE EXECUTIVE COMMITTEE

Memphis, Tennessee
Saturday, October 4, 2014

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September 29, 2014

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MEMORANDUM

Greetings. The following is an *attorney-client privileged communication and constitutes work-product*. Please keep the following information confidential. The following briefing memo is keyed to the draft agenda circulated to the Committee by Mr. Sumner. If any member of the Committee has any questions about these items, I will be pleased to address them, either prior to the meeting or during the meeting.

4. FCC/Regulatory items

4.1. Action items

4.1.1. Continuation of Evaluation of Strategies to Improve the FCC Amateur Radio Enforcement Program (Report on Hollingsworth/Imlay meeting with Travis LeBlanc; evaluation of value of Riley Hollingsworth contract with ARRL; Status of WARFA Net malicious interference and New York City area malicious interference cases; evaluation of strategies to improve FCC Amateur Radio enforcement program performance and visibility of enforcement actions).

I reported to the Board in July of this year that, in the months since Travis LeBlanc has taken the helm at FCC's Enforcement Bureau, we have seen signs that Amateur Radio enforcement was *slightly* improved. What had occurred since the January Board meeting was reported in July as follows:

1. The FCC web site(s) – there are still two, but the old one is being more rapidly phased out – is now far more up-to-date than heretofore; enforcement actions through at least most of April of 2014 had been listed on both sites.

2. There was in April a citation issued to a user of an RF "grow light" which was causing interference at levels far in excess of Part 15 and part 18 permitted field strengths.

3. There was an HF NAL issued in January for $7,000 that resulted in a voluntary surrender of the license of a ham who was accused of (and admitted to) malicious interference.

4. In June, there was a Notice of Violation issued to a ham in Sweet Home, Oregon for malicious interference to the WARFA net in the southwest on 75 meters; one of our two major problem cases that we have been working on this year.

I provided to the Board in July a briefing memo that we had prepared for the meeting that we had scheduled with Travis LeBlanc, which occurred on July 10, 2014. I was prepared to discuss the results of that meeting with the Board at the July Board meeting, but due to the truncated schedule for the Board meeting, I deferred that oral report at the Board's direction. However, the LeBlanc meeting had good and bad aspects. I attended the meeting with Riley Hollingsworth, at which time I made it very clear that Riley was appearing as a contractor of ARRL's and not in the individual capacity that Riley had told me he preferred as an explanation

of his attendance. I didn't want any lack of transparency in our meeting with LeBlanc and wanted all information on the table in advance. As I reported to President Craigie and CEO Sumner after the meeting took place on July 10:

> Yesterday, Riley and I met in the really nice, huge cafeteria in the back of the Agriculture Department building near the Metro. It was nice, inexpensive and a good prep area for FCC meetings. You have to go through security and get a sticker badge but it is worth it and not very burdensome. Thanks to Riley for the tip.
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> We strategized the meeting and the presentations each of us would make in addition to the written documents but it was difficult because we didn't know who would be at the meeting or what Travis LeBlanc was going to do.
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> When we got there, we were early and were put in a small conference room that might have been the same one that Dave and I used when we met with Michele Ellison. LeBlanc came in with William Davenport, which was not good news from my perspective, and Davenport immediately got Laura Smith on the phone before we started.
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> I went through the briefing paper without much interruption and, because Laura was on the phone, I praised her work and focused on the lack of visibility of it. I spent a lot of time explaining the pre-Riley days, the Riley years between 1998 and 2008 and the situation now. Davenport asked whether the situation was getting any better or worse. I said it was getting a bit better but in contrast to the days when deterrence was at a high level because enforcement and the program were visible, the current situation compares poorly.
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> I should have in hindsight spent more time on the autonomy issue and asked them to give Laura more authority and fewer levels of review so that she could do her job more efficiently (and faster). Instead, I focused on the web site and the lack of travel opportunities for Laura, but knowing that Laura doesn't like to travel, I assumed the fact of the inability to reimburse her directly or to have her show up at ham events and suggested some webinars instead. It was at this point that Davenport went on the attack and asked why we would subject Laura to the kind of threats and abuse that hams were heaping on her. This came as a big surprise, but clearly Davenport was out to paint all hams as dangerous vigilante hatemongers. I used that as an example of the fact that hams generally are not seeing the work that is done and that when their emergency communications preparedness nets are being interfered with all the time for a year and a half, they get very frustrated. It became a bit tense between Davenport and me but I couldn't let him paint that false picture without challenge. I did say that we had not heard of abuses on Laura, and that there is some social pressure that we might be able to bring to bear if we had some names and locations, but of course we didn't have any control over individuals, licensed or otherwise. Riley explained that to some extent the threats and abuses of Laura were par for the course and they reflected the fact that some people in such a large group are going to be mean people but it didn't reflect on the service as a whole. That was a very valuable and calming remark and it helped a lot. We also said that if Laura could use webinars and Skype appearances that were regulated, we could get her some exposure and protect her completely from any untoward remarks.
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> We talked a lot about the web site and the opportunities lost in having enforcement actions more than a year old listed without anything newer. I told them that it was getting better, however, and Davenport took credit for that (though he did absolutely nothing when we brought the same issue up to Ellison a year and a half ago or more).

Toward the end, LeBlanc finally spoke after listening quietly all along. He thanked us for coming in and said in response to a fear I had expressed that he didn't think we were just coming in with problems; that we had some proposed solutions too, and that was well-received. He said that he appreciated our good remarks about Laura and that he was trying to get some travel money so that Laura could, "subject to her personal schedule and without intruding on it," make some trips to ham gatherings. Davenport said that they had arranged for Laura to make two trips per year but Laura piped up very defensively and said that all that had to be suspended in the past two years because of sequestration. So that validated our complaint about visibility.

LeBlanc said that he agreed that the web site(s) were a "hot mess" and that to the extent that they could, they would try to fix it. They were trying, he said, to get a dedicated enforcement web site that they could control.

He said he hears us about visibility and deterrence and that they could get a bigger bang for the bucks that Laura was spending.

I thanked them for the WARFA net June 5 Notice of Violation and the April grow light interference order. I mentioned power line interference briefly but Riley and I had agreed earlier that there were no really ripe cases that merited mentioning. I spent a bit longer on grow lights because Travis knew nothing about it. I noted that we had three more complaints coming in and that the FCC lab had, on information and belief, tested some 20 RF lighting ballasts. I said that the grow lights affected AM broadcast listeners as well as hams and so did power line noise. That reference got their attention.

I found Travis to be polite and attentive and his remarks at the end were quite positive and encouraging. Candidly, Bill Davenport is a complete jerk and did his best to portray us as shepherds of hyenas. Clearly, Laura Smith has no intention of doing any significant amount of travel and appearances so the best we can hope for from her is a few webinars carefully scripted and perhaps some more visibility of her work, but no visibility of her. And frankly, that is probably a good thing, since she has a meek and mild approach in person and doesn't present the visage that Riley projected in his time, which was the "sheriff in town", and that really worked.

The following notes were those that Riley put together concerning this same meeting:

Meeting with Travis LeBlanc and William Davenport, July 10, 2014

The meeting lasted 45 minutes in the Enforcement Bureau conference room at the FCC headquarters office in Washington. Travis seemed receptive and listened closely. Chris went over the points in the briefing memo that was submitted in advance, and in the interest of full disclosure explained that I was assisting the ARRL as a consultant.

Chris got to make all the points, but as soon as he mentioned the possibility of Laura's going to more amateur events, we were interrupted by Davenport, who asked if they should expose Laura to the types of people that were sending the threatening e-mails. As we know, Laura gets threats of physical harm, even death threats and what probably is more significant, very obscene and sexually explicit e mail.

Davenport used those threats and obscene mail against amateurs and said that the amateurs were really getting a bad reputation because of the e mail they were sending. It seemed to feed his opinion that "all amateurs are crazy."

Death threats were not uncommon during my tenure. We probably got one or two a year. They were never a problem unless the security personnel found out about them and overreacted, wanting me to call the local police and so forth. Usually they were just considered really stupid. However, Laura gets incredibly insulting and obscene sexually oriented e-mails. In fact, that type of mail bothers her more than any physical threats. I know that they bother her, and I don't think her husband would ever let her travel alone even if she wanted to.

Chris pointed out that this type of e mail was being received because many were frustrated over the apparent lack of enforcement that resulted from its low visibility. We also pointed out that part of this trend was the nature of the times. I pointed out that I had worked as a census taker several years ago and one full day training was devoted to how to handle the anger that people felt generally these days, especially toward the government. I thought the training was overkill at the time, but when I went out over several months taking the census, I was shocked at how rude and hateful people were. Coupled with the safety and anonymity of the internet, it's even worse. I don't know how Laura or anyone else in her position could be insulated from that.

Some of the mail Laura is getting is generated by the Canadian amateur operator, Madera, and dealing with Canada on any aspect of Madera's conduct has been futile for years.

Travis said that he got a lot of hate mail as well. We did not come up with a solution, but that is clearly one reason, aside from any budget considerations, that they are not going to pressure Laura to travel to more than one or two events a year.
A good bit of the discussion hinged around the Commission's very poor web sites. We cited the WARFA case and the delayed posting. Davenport took responsibility for that, saying they had dropped the ball. Earlier I had learned from Frank Haynes in the Atlanta office that he is responsible for getting NOV's posted and does not depend upon Laura to send those documents, unlike other Amateur enforcement actions. Frank failed to get the NOV posted timely. Frank is very supportive of Amateur radio, having just gotten his Extra Class again, and wants to post as many actions as possible. What happened was purely an oversight on his part.

We discussed the travel situation at length. Travis seemed open to having Laura do more travel, and to a limited extent Davenport agreed. It was acknowledged however that travel for this service was difficult because it was always on a weekend. Both Davenport and LeBlanc agreed that Laura could travel more, but it would depend upon her wishes and responsibilities that she had at home. They both agreed that Skype or other video presentations would work fine and that she could do those most anytime.

Travis stated that the web site problem was aggravating for the entire agency and said he was trying to get a media person just for the Enforcement Bureau who could coordinate the releases of enforcement documents. We had a lengthy discussion of the limitations imposed by the Privacy Act, and Chris suggested at least using summaries of actions, with the city and state and violation inquiry shown, without the names of the parties.

> We repeatedly emphasized that timeliness in all categories of public releases and postings on the web site was critical to obtaining enforcement mileage and visibility.
> Travis complimented Chris on the way the points were raised in the meeting and said they would help out where they could.

Since the time of that meeting, we have had no further contact with Travis LeBlanc or William Davenport. Riley has had at least one of his regular meetings with Laura Smith about pending cases. He always asks Dave Sumner and me for agenda topics for those meetings. The problem with them, in my observation, is that if Laura Smith is not talkative, he does not push her for information and we typically get thumbnail versions of her responses to specific questions we have. On August 8, because of terse bits of information about the New York City/Long Island VHF jamming case from Riley, Dan Henderson and I followed up with a conference call with Laura about that case. She was very forthcoming with us and it remains a mystery why Riley couldn't get more information than he did, because it was no problem for us to speak with her directly.

The primary goal for the conference call that Dan Henderson and I had with Laura Smith was to get more information from Laura about the status of the New York repeater jamming case than what Riley provided to us, but during the call, we got into a long discussion with Laura about a lot of issues. Because of that, I began to wonder about the value that we are getting from Riley's monthly or so meetings with her. The conversation included grow light strategy; the WARFA net and the problem of the association with WARFA of the neo-nazi person; threats against Laura and LeBlanc and her handling of them; the New York repeater jamming case; a VEC disaccreditation matter and, via Dan, a San Antonio enforcement matter.

As to New York, we mentioned that we knew that there is an ongoing investigation and we were aware that earlier, some ham leaked information that compromised the investigation but we wanted our Board to know as much as possible about the status of the case as we could, because our Division Director for the Hudson Division is being barraged by demands to make something happen. We told her that our information was that if one known individual is sanctioned, there would be a high degree of deterrence created thereby and the situation would calm down. Laura said that this case is very active and that there is a time frame, which she could not share with us, for action against at least one perpetrator. She hinted that it was the individual we identified. She said that the investigation includes non-Amateur malicious interference. They know the main perpetrator's pattern. The planned enforcement action is a forfeiture which will be "aggressive" and not a slap on the wrist. There are now ongoing lots of conversations among Laura and the District Office staff. This will be a large forfeiture. Laura was given a number but said that she was precluded from sharing that. I think this is about as much information as we can have about this ongoing investigation and I am convinced that they are actively working on this. The forfeiture may principally relate to non-amateur jamming at this point but if it is the individual we identified, it should be sufficient to cause some deterrence in the Amateur case. Mike Lisenco had told me that there is audio on YouTube of the individual jamming GMRS communications, and I mentioned it to Laura. She seemed to not know about it but said she would notify the District Office.

We have had two major enforcement actions since the July 10 meeting with LeBlanc (not including the regulatory resolution of the long-pending and long-overdue Baxter license renewal matter). These are *Notices of Apparent Liability for Forfeiture* released July 22, 2014 against Michael Guernsey, KZ8O (ex-ND8V), of Parchment, Michigan in the amount of $22,000, and Brian Crow, K3VR, of North Huntingdon, Pennsylvania in the amount of $11,500. There have been as well a series of notices for failure to identify. Those at least signal the FCC's continued presence in enforcement though the deterrence value of those actions has yet to be ascertained.

Those are important actions, regardless of the effect they have had so far, and we have given them a lot of visibility. But nevertheless, we have had no action on the two big cases that are getting the most attention: the 2-year-old WARFA net malicious interference on 75 meters and the New York/Long Island VHF jamming case. In the former, there is a very notorious ham that shares a dislike for the jammers of the WARFA net. Unfortunately, that notorious ham has zero credibility with FCC and is reputed to be something of a neo-nazi himself. Though the WARFA net people are not at all of that ilk (they are largely African-American and have a friendship net…) they have grasped at straws and accepted the help of the notorious ham and as the result Laura Smith paints the entire WARFA net with the same brush as she does the notorious ham. The head of WARFA, a fine gentleman named Moody Law, has a daughter who is a lawyer and who has filed a series of FOIA requests with FCC about the enforcement status of the case. She is doomed to failure since pending investigatory material is exempt from FOIA disclosure but she has made a nuisance of herself with EB, FCC and that is cited by Laura Smith as a reason why FCC is not going to make any extraordinary efforts to resolve this case.

Likewise in New York, one Howard Price from up there has made himself *persona non grata* with FCC due to his repeated (admittedly strident) entreaties for help. Except as indicated above during our telcon with Laura in August, we tend to get a lot of excuses from Laura as to why we can't get any action in the cases we are interested in. She continues, in general, to be very defensive about FCC inaction in very visible cases.

We have continued our contractual relationship with Riley Hollingsworth, K4ZDH to assist us in developing strategies to improve the enforcement program, but as I have said to the Board and the EC several times now, there are issues with Riley's performance that bear some discussion. The results of Riley's monthly meetings with Laura Smith seem to me to illustrate a disquieting trend: Riley tends to advocate Laura Smith's frustrations to us, rather than advocating our concerns about the ineffectiveness of the program to her. He repeats to us her excuses for inaction and they both blame the victim: as an example, Riley said that the repeater owners and users in New York City and Long Island should make backup repeater plans if the jammers shut them down. If that were possible without the jammers following the emergency preparedness nets, they would have done so.

Riley tends in my view toward the single purpose of obtaining status reports from Laura about specific cases, rather than strategizing ways to improve the program overall: he looks at specific trees rather than the overall condition of the forest and how to improve it, though we made it clear to Riley when we contracted with him that our expectation of him was to suggest strategies to improve the program in general. There is a good deal of "acceptance" of the status quo on both Laura Smith's and Riley's parts. Neither person seems to have any interest in

challenging the system, though Riley has beneficially suggested some "work-arounds" such as having Laura Smith appear via Skype at amateur radio events. It may be time to manage Riley a bit more closely since he tends to structure his own work activities for us, including lunch meetings on issues that are of current interest to him but not the urgent enforcement issues of the day.

The value of our contractual affiliation with Riley, however, is his amazingly durable popularity in the ham community. That is of value to us only to the extent that we publicize the relationship, which Riley (who craves the limelight, without any doubt at all) thinks we should do.

Our plan, prior to LeBlanc's arrival at EB, because of an increased perception among hams that the enforcement situation was approaching the pre-Hollingsworth/Richard Lee era in terms of FCC inaction in long-pending malicious interference cases (the perceived inaction being due in large part to the lack of visibility of Laura Smith's work), was going to be to visit with the Commissioners about Amateur enforcement. We have cases to cite as evidence that the Amateur Radio compliance program is simply not working: we have a 75-meter ongoing net jamming case which is racially motivated; we have a two-year-old repeater jamming case in metro New York City; and we have a recent situation in which the failure of Laura Smith to communicate with our OOs in Missouri led to the preparation of more than 105 hours of tapes and evidence gathering by our OOs, none of which was used by FCC and which led to the resignation of our dedicated but disillusioned OOs. The OO program is largely moribund.

Since the arrival of LeBlanc, however, we couldn't just go directly to the Commissioners and address our perceptions of the failures of the Amateur Radio Enforcement Program. Bypassing a new Bureau chief would have been poor strategy indeed. So, at the EC's instruction in March, we filed our comments in the FCC process reform docket, explaining in detail our dissatisfaction with the current status of the Amateur Radio enforcement program and the reasons for it; and we have met with LeBlanc. As hoped, we did qualitatively better with LeBlanc than we did with Ellison, but not measurably so at this point. It seems to me that we are still not ready to approach the Commissioners about enforcement directly. We still have issues about the visibility of Laura Smith's work; about her dedication to her job, which I believe is lacking; the continued unwillingness of the Bureau to provide timely information to the Amateur Radio media about pending enforcement actions; the isolation of Laura Smith from the Amateur community; the failure of Laura Smith to communicate effectively with OOs; and most especially, the willingness of EB to allow highly visible, highly damaging malicious interference cases to fester for years at a time. The dual EB Amateur actions website disaster seems to be largely fixed now, however, as is the ability of the Commission to keep listings of enforcement actions current. Laura Smith is reportedly better than she has been about keeping in touch with ARRL Lab staff (about the status of power line RFI cases). Of all these problems, however, the absolute worst is the unwillingness or inability of FCC to quickly respond to malicious interference cases. It is that about which we need to stay on both Laura Smith and Travis LeBlanc, and if regular constant pressure does not fix that problem, we should be ready to (a) meet with Commissioners about the pending MI cases; and (2) bring Congressional oversight pressure to bear on FCC to fix the active, long-pending MI cases.

There are some issues that the EC should discuss relative to enforcement in addition to our overall strategy for improvements in the program. Some that immediately come to mind are the following:

(a) We should discuss and evaluate Riley Hollingsworth's overall performance under our contractual relationship with him. Should we continue that relationship? Should we ask him to work differently with us than he has thus far?

(b) Perhaps most importantly, given Riley's "folk hero" status in the Amateur community, should we publicize our contract work with him on improving enforcement? ARRL has been criticized as being ineffective in encouraging a return to the good years of enforcement between 1998 and 2008. When an earlier EC instructed us to negotiate a contract with Riley, Riley was also writing a column for CQ magazine. It is my recollection that because of that, we did not want to publicize Riley's arrangements with ARRL. Riley is no longer writing for CQ and he does not seem to have any other contractual arrangements with anyone involved with Amateur Radio. He has indicated to me that he has no current objection to having his arrangements with us made public. Riley of course has been candid with FCC staff about his work with ARRL, but we have not been so forthcoming with the Amateur community so far.

(c) How should we interface with Laura in the near future? Only through Riley? Riley and Dan Henderson? My office?

(d) Kermit Carlson reports that the large number of open (some very old) Power Line RFI cases that we have at the ARRL Laboratory, numbering about 70 or thereabouts, is actually a very small number due to the fact that hams involved have moved, died, abandoned the avocation, or, in a few cases, had their interference complaints resolved. Having had very little success with these, Kermit may have some recommendations for you by the time of this meeting.

4.1.2. MD Docket 14-92; Assessment of FY 14 Regulatory Fees; Consideration of the Regulatory Fee Structure for Vanity Call Signs Going Forward (Review of FCC Report and Order and Consideration of Options for Revisions to or Elimination of User Fees for Vanity Call Sign program participants).

On August 29, 2014, FCC released a Report and Order and Further NPRM in this docket dealing with annual regulatory fees. In it was a discussion about eliminating the fee for Vanity Call Signs. FCC wants to know whether or not the cost of collecting the fees (and refunding fees where the request for a vanity call sign cannot be honored for whatever reason) exceeds the value of the aggregate fee collection. There are other classes of regulatory fees that are proposed for elimination but the subject of vanity call sign fees was resolved without action for this year.

FCC has since the inception of the Vanity Call Sign Program classified Vanity Call Sign fees as *regulatory fees*. They seem more like *application* fees because you pay them when you apply for the call signs and then you pay for renewal of them thereafter (for up to ten years at a time) when you renew your license. There is a big difference, however. Application fees are due when you *apply* for a vanity call sign, not for the use of the call sign. Application fees are charged pursuant to Section 8 of the Communications Act of 1934, as amended (the Communications Act) If the

fee charged for a vanity call sign was an application fee, you could apply for a vanity call sign and if you weren't entitled to it for any reason, or if that vanity call sign is not available, FCC would keep your application fee and return your application. The Regulatory fees on the other hand, are charged pursuant to Section 9 of the Communications Act,[1] and are for the *use* of that call sign. As it is, if you apply now for a vanity call sign and it is not available or if you are not entitled to it, you will get a refund of the vanity call sign regulatory fee that you sent in with your application.

FCC said in the August Order and NPRM as follows:

> In the *FY 2014 NPRM*, we sought comment on whether to exclude certain categories, such as amateur radio vanity call signs ($21.60 for a 10-year license) and general mobile radio service (GMRS) ($25 for a five-year license), from regulatory fees. We also sought comment on eliminating other regulatory fee categories, such as Satellite TV, Satellite TV Construction Permits, Broadcast Auxiliaries, LPTV/Class A Television and FM Translators/Boosters, and CMRS Messaging (Paging) from regulatory fees. We sought comment on the benefits of discontinuing such collections because these fee categories account for a relatively small portion of annual regulatory fees. The fees for single licenses in many of these regulatory fee categories are below the *de minimis* threshold adopted above.
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> *****
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> At this time, we are not eliminating these categories or GMRS, Satellite TV, LPTV/Class A Television and FM Translators/Boosters, and amateur radio Vanity Call Signs because, based on examination, we do not have adequate support to determine whether the cost of recovery and burden on small entities outweighs the collected revenue; or whether eliminating the fee would adversely affect the licensing process. We will reevaluate this issue in the future to determine if we should eliminate other fee categories.

FCC decided to keep the fee for Vanity Call Signs because, in large part, no one commented on this issue (we did not comment because the NPRM did not make reference to Amateur Radio at all, but only to vanity call signs so it did not come up in a normal word search). It is pretty clear however that we will have another bite at this apple in the future. The question is whether or not we want to urge the FCC to delete or keep the fee, as relatively small as it is.

What we do NOT want to do, it seems to me, is to give FCC any reason to eliminate the Vanity Call Sign program. We originally suggested it as an alternative to a proposal in Congress many years ago that would have imposed annual license fees (i.e. taxes) on FCC licensees. We said that license fees for Amateur Radio operators were to be avoided as they would serve as a disincentive to growth of the Service and it would cause many who are keeping licenses with the intention of returning to the avocation after a "sabbatical" due to work or family obligations that occur during periods of people's lives. We urged Congress (successfully) to instead create a

[1] Section 9 regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities. 47 U.S.C. § 159(a).

program that allows people to choose their call signs and that those who wished to take advantage of a program that gave them something would be the ones to pay for it. That, we argued, was far preferable to an annual fee for having an FCC license that everyone had to pay. We told Congress that they could charge quite a premium for a vanity call sign. Instead, FCC did what they could to charge for vanity call signs only enough to cover the cost of administering that program. That is why the vanity call sign fee is a regulatory fee rather than an application fee, and that is why the regulatory fee amount changes every year. The FCC has to determine each year what the cost of administering the program has been over the previous ten year period and they recoup that based on the estimate of the number of vanity call sign applicants and renewal applications they will get in the next fiscal year.

So, as I see it, the elimination of the fee for Vanity Call Signs might give FCC a basis for eliminating the program which would no longer pay for itself. FCC has in the past (but not recently) asked us to allow them to convert Vanity Call Sign fees from regulatory fees to application fees. Fine for them, not fine for hams, who would have to pay for something that they didn't get in some cases. Better to pay for the use of the Vanity Call Sign than to have it be an application fee that is non-refundable if the selected call sign(s) are not available for some reason.

4.1.3. FEMA proposal for Modification of FCC Rules for licensing of FEMA stations and use of Special Call Signs Denoting FEMA (akin to Milrec or Club Station Licensing).

This issue dates back quite far. On or about October 4, 1995, John Johnston, then of FCC, wrote to FEMA in response to a FEMA letter dated September 6, 1995 requesting some improvements in the ability of FEMA to communicate with Amateur Radio operators and to provide emergency and disaster relief. Johnston responded to some rule changes that FEMA had proposed at the time to facilitate FEMA/amateur communications. NTIA had approved FEMA stations' communication with Amateur Radio stations, but FEMA said that amateurs were reluctant to do that because they did not recognize FEMA call sign WGY912. FEMA asked for a block of call signs distinctive enough to identify them as FEMA call signs. So Johnston assigned four blocks of call signs (AF0EMA through AF9EMA, KF0EMA-KF9EMA, NF0EMA-NF9EMA and WF0EMA-WF9EMA) for FEMA use. The letter left open the issue of licensing arrangements which would have to be worked out. Johnston asked for further details about NTIA's authorization of FEMA stations to communicate with radio Amateurs.

In June of this year, Ted Okada, the CTO of FEMA corresponded with Cross at FCC in order to rekindle the Part 97 rule changes that FEMA would like to initiate relative to authorized transmissions between FEMA stations and amateur stations. Cross noted that Amateur rules (Section 97.111(a)(4)) already allows transmissions necessary for hams to exchange messages with U.S. Government stations necessary to providing communications in RACES. NTIA manual Section 7.3.8 permits Federal communications with RACES stations. Cross proposed to modify Section 97.111(a)(4) to read as follows:

"(4) Transmissions necessary to exchange messages with a United States government station, necessary to providing emergency or disaster relief communications, including RACES, test, and exercises; and…"

Cross noted that Johnston had proposed a more expansive Section 97.409 in order to provide in detail the conditions under which U.S. Government stations could communicate with Amateur stations. In effect, Cross proposed to FEMA that FEMA stations be licensed just like Club or Milrec stations. FEMA didn't like that. They said:

> Unlike the situation of a club station trustee, the station privileges for these proposed FEMA stations are determined solely by the privileges of the control operator, except possibly during an imminent or actual emergency, when necessary for the station to be operated by government personnel. In such a case, it is a government station operated on Amateur spectrum for emergency interoperability with Amateurs, not an Amateur station operated by an individual without the proper class Amateur operator license.
> Because we propose that this license custodian be required to have an Amateur operator license, our proposal is inconsistent with the specifics of military recreation station licensing.

FEMA prepared a draft Petition for Rule Making. They would like to have ARRL's buy-in for it. The draft petition proposes two rule changes which anticipate that the operators of the FEMA stations would themselves be Amateur Radio licensees. Cross had pitched their idea differently; he had suggested that the FEMA operators would NOT necessarily be ham licensees so this looked a lot like Federal government use of amateur allocations without authority in the Table of Allocations. It is not that. Here are the rule changes FEMA proposes:

> (1) Add new section (b)(4) to "97.5 Station license required":
> (4) *A FEMA (Federal Emergency Management Agency) station license grant.* A FEMA station license grant may be held only by the person who is the license custodian designated by the Administrator of the Federal Emergency Management Agency. The person must not be a representative of a foreign government. The person must hold an amateur operator license grant. Call signs for assignment to a FEMA station license shall have a prefix of AF, KF, NF, or WF; a single digit (0 through 9); and the letters "EMA" as the suffix.
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> (2) Add new section (e) to "97.17 Application for new license grant":
> (e) The forty call signs specified in 97.5(b)(4) for assignment to FEMA stations will be shown on a single license grant to the designated FEMA license custodian.

The issue for consideration is whether or not to support FEMA's proposed rule changes to allow FEMA stations operated by licensed Amateurs to conduct communications with other Amateur stations without the RACES limitations that are imposed by the current rules. I should note that my conversations with Cross at FCC have revealed a good deal of resistance on the part of the Mobility Division at FCC to this concept by FEMA. FEMA described its proposed course of action depending on the level of ARRL support available as follows:

1. Prepare final draft, based on your response to this draft.

2. Provide final draft to Dave Sumner, for discussion at the October Board of Directors meeting – looking for an indication from the Board that ARRL will support the PRM when filed.

3. Assuming the BOD is supportive, submit PRM to DHS Joint Wireless Program Management Office (JWPMO, the DHS spectrum management office) for them to bring to NTIA's Interdepartment Radio Advisory Committee (IRAC); requesting that IRAC either submit to FCC on behalf of the US Government Executive Branch, or permit FEMA to submit it to FCC directly.

4.1.4. ET Docket 14-99, Model City for Demonstrating and Evaluating Advanced Sharing Technologies (ARRL Comments Filed August 29, 2014; consideration of ARRL involvement in President's Council of Advisors on Science and Technology and PCAST report implementation).

ARRL filed comments in this proceeding on August 29. In this docket, FCC and NTIA jointly propose to establish, via a public/private partnership, a "model city" (i.e. an urban environment) that is considered a test bed for spectrum sharing and technology development and initial rollout and evaluation. The original idea came from the President's Council of Advisors on Science and Technology (PCAST) in 2012.

These comments were drafted initially by Brennan Price and reviewed and edited by me on a very short fuse. The basic premise of our comments is that there can't be a model city for technological development and spectrum sharing without integrating Amateur Radio in it. There is also an argument at the end about the inherent inequity and failure of the concept of a Model City for technological rollout and testing if some of the services in the model city are saddled with public, private or environmental antenna regulations which preclude the creation of a realistic environment.

The EC directed that we monitor this proceeding because, absent our meaningful participation in Model City technological investigation, we could be very much out in the cold. There was not a reply comment period permitted by the public notice and a review of the docket file does not indicate any need to submit any *ex parte* rebuttal information.

The policy issue for the Committee is the appropriate level of participation in PCAST activities in the future. Mr. Sumner is better able to advise about this than is my office as I have had no contact with and am unfamiliar with PCAST except what is in the report in this docket proceeding.

4.2. Status update/reporting items.

4.2.1. RM-11708; ARRL Petition for Rule Making to delete restrictions on symbol rates for data communications and to establish a 2.8 kilohertz maximum occupied bandwidth for data emissions below 29.7 MHz (Status report on FCC planned adjudication of Petition).

The current plan that the Mobility Division has for handling this petition is to prepare and send to the Wireless Bureau front office in December a Notice of Proposed Rule Making. The NPRM reportedly (via Bill Cross) will propose the elimination of the symbol rate limit (which Cross continues to refer to as the "baud rate" limit) but he said that it will not specify a specific bandwidth limitation and the 2.7 kHz proposed limit will be a "black eye" issue. I have no idea what he meant by that and he refused to elaborate. I take it to mean that the Commission will ask about but not propose a maximum bandwidth in the CW/RTTY/Data subbands at HF.

Originally, Cross had told Dan Henderson that the Commission would hold this Petition until there were other items to consolidate into an omnibus rulemaking. But Cross told me that the Petition was old enough that the Division did not want it to be considered an "old" item more than one year old. There is apparently a good deal of pressure from Wheeler to move items and not create backlogs. However, Cross said that perhaps some things will be added to the NPRM, such as a proposal to have club licenses expire at the same time as a trustee's license expires so that the two would be renewed contemporaneously. They have not decided that yet. Cross will be working on the NPRM in the November/December time frame.

When the front office will send the December draft NPRM to the Commissioners, and when the Commissioners will address it is unclear of course.

4.2.2. IB Docket 04-286; Recommendations Approved by the WRC-15 Advisory Committee (WRC-15 Agenda Item 1.18 – Allocation of the 77.5-78 GHz band); *and* RM-11666, Vehicular Radars in the 77-81 GHz band; filing by Automotive Manufacturers to amend Part 15 of the rules to permit operation of vehicular radars to operate at 77-81 GHz in addition to 76-77 GHz. (Status of FCC action on RM-11666 and report on Google testing at 76-77 GHz of autonomous vehicle systems).

There has been no action on the now two-year-old petition by Robert Bosch, RM-11666, to permit Part 15 operation of automotive radars in the 77-81 GHz band. Reportedly, there is a draft NPRM that has been reviewed twice by Julius Knapp at FCC OET but there is nothing pending on circulation among the Commissioners yet. There is no proposal to restrict Amateur primary operation at 77.5-78 GHz.

Meanwhile, Google has applied to FCC for an experimental authorization to permit testing of autonomous vehicle systems at 76-77 GHz for forward-looking adaptive collision avoidance in motor vehicles. There is no evidence that the primary Amateur allocation at 77.5-78 GHz is threatened. Amateur operation is not permitted at 76-77 GHz now due to concerns about interaction with high-power automotive radar systems in that segment.

4.2.3. ET Docket 13-49; Revision of Part 15 of the Commission's Rules to permit unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band. (Comments filed May 28, 2013 re rules governing Part 15 devices and Wi-Fi in the 5850-5925 MHz band; update on status of proceeding).

FCC released its Notice of Proposed Rulemaking in this docket on February 20, 2013**.** It would revise the Part 15 rules governing unlicensed national information infrastructure (U-NII) devices in the 5 GHz band. These devices use wideband digital modulation techniques to provide

a wide array of high data rate mobile and fixed communications for individuals, businesses and institutions. FCC proposed two additional bands totaling 195 MHz for unlicensed operation: 5.35-5.47 GHz and 5.85-5.925 GHz. The Amateur Radio Service has a secondary allocation at 5.65-5.925 GHz, including an Amateur Satellite Service uplink allocation of 5.65-5.67 GHz and a downlink allocation of 5.83-5.85 GHz. The FCC proposes to modify certain technical requirements for U-NII devices to ensure that the devices do not cause harmful interference and thus can continue to operate in the 5 GHz band and make broadband technologies available for consumers and businesses.

We filed comments on May 28, 2013 arguing that the Amateur Radio Service has a good record as a spectrum partner with the other licensed services in the 5 GHz band, and that meaningful access to the 5 GHz band for amateur and amateur satellite operations continues to be in the public interest. We also argued that any decision on U-NII authorization in the 5.85-5.925 GHz band should await a full and complete evaluation of interference potential and interference mitigation techniques among the varied incumbent users of that segment, and an opportunity for the public to evaluate the results of the NTIA study on compatibility. No FCCV action has been taken since then.

4.2.4. RF Lighting Device Complaint to FCC (Complaint Filed with FCC March 12, 2014; status of efforts at partnering with AM Broadcast advocates).

There is very little to tell about this issue. I have mentioned partnering with NAB to address RF Lighting interference to AM Broadcast reception which also affects MF and HF Amateur operation. To date, I have not made any specific proposal to NAB. I am, however, presenting a paper at the SBE National Conference in Syracuse, NY in early October on the subject of RF noise as a primary problem inhibiting AM improvement. FCC has not yet released its proposals for rule changes and other actions that would improve the lot of AM broadcasters, which at present is seriously problematic as a business matter.

4.2.5. RM-11715; Mimosa Networks, Inc. Petition for Rule Making, proposing Part 90 Mobile allocation in the 10.000-10.500 GHz band; impact on Amateur secondary allocation at 10.45-10.50 GHz (Status of Petition domestically and international advocacy thereof; comments filed April 11, 2014).

This Petition for Rule Making was filed May 1, 2013 by Mimosa Networks, Inc. of Los Gatos, CA (a wireless broadband products manufacturer). The petition seeks a Part 90 mobile allocation in the 10.000-10.500 GHz band, and service rules permitting Part 90 licensing of mobile wireless service providers in that band. It was placed on public notice March 11, 2014. We filed comments in strong opposition to the Petition on April 12, 2014.

There is an Amateur secondary allocation at 10.0-10.5 GHz and the Amateur Satellite Service has a secondary allocation at 10.45-10.5 GHz. Both the Amateur Service and Amateur-Satellite Service allocations are secondary only to Federal Government radiolocation. By footnote, NON-government radiolocation has to share with Amateur Radio on a non-interference basis (i.e. they cannot interfere with us). That same U.S. footnote, however, ***apparently denies FCC the authority to make the allocation that Mimosa is asking for***:

US128 In the band 10-10.5 GHz, pulsed emissions are prohibited, except for weather radars on board meteorological satellites in the sub-band 10-10.025 GHz. The amateur service, the amateur-satellite service, and the non-Federal radiolocation service, which shall not cause harmful interference to the Federal radiolocation service, are the only non-Federal services permitted in this band. The non-Federal radiolocation service is limited to survey operations as specified in footnote US108.

The Mimosa petition seeks to mimic the Part 90 licensing proposal that has existed for some years now in the 3.6 GHz band, which is available for non-exclusive, Part 90 licensing for Wi-Max systems involving non-exclusive, nationwide licenses, with registered, fixed sites.

We remain convinced that the best defense is the use of US Footnote 128, and our argument that the FCC is without the jurisdiction to make this allocation, at least without some buy-in from NTIA. Brennan Price spoke with NTIA staff which is now aware of the problem with the US Footnote. NTIA has made no commitment thus far. Brennan promises to press them to retain the Footnote and to keep Mimosa out of this band. Mimosa filed some very aggressive reply comments, but they were in our view ineffective in rebutting our Footnote 128 argument. Should NTIA agree, however, to change that footnote, FCC would be able to proceed with the Mimosa petition.

4.2.6. RM-11731; AT&T Mobility Spectrum LLC et al. Proposed Modification of FCC Part 27 Wireless Communications Services at 2305-2320 MHz and 2345-2360 MHz (Comments filed September 22, 2004).

ARRL filed comments September 19 (after EC review and approval) in response to the petition by AT&T (and other wireless carriers filing jointly) to change the rules applicable to Wireless Communications Services licensees in the 2.3 GHz band. The WCS band extends from The proposal is to use the 2.3 GHz band for uplinks and downlinks for an LTE-based in-flight broadband service. The ARRL comments were developed in effect as an opportunity to reargue our need for an upgrade in the adjacent 2300-2305 MHz band, which FCC has been reluctant to do over the years. The argument is that, with the intensification of the use of the 2305-2310 MHz band, Amateur use of that band will be further compromised, and we have de facto primary status of the band 2300-2305 MHz anyway, so FCC should use this opportunity to make that segment primary for the Amateur Service.

Principally, AT&T and its allies claim that technical regulatory changes requested in the Petition (including rule changes governing use of WCS Block A at 2305-2310 MHz) will permit "nationwide deployment of AT&T's innovative in-flight connectivity service using currently fallow spectrum (sic) *while at the same time preserving adequate interference protection to users of adjacent bands*". Notwithstanding this broad and nebulous claim, there is no showing anywhere in the Petition that the proposed rule changes would permit *any* continued Amateur Radio operations on a secondary basis in the shared A Block (2305-2310 MHz). More importantly, there was no showing that Amateur Radio operations in the 2300-2305 MHz band, immediately adjacent to WCS Block A, would be protected from increased out-of-band emissions (OOBE) after the proposed rule changes set forth in the Petition are implemented, and

after AT&T's air-to-ground LTE service is launched. The Petition, we said, is therefore incomplete and fails to justify the relief requested. Our bottom line, however, realizing that this battle over out of band emissions has already been fought and not won, is to ask for a primary allocation at 2300-2305 MHz. We will see where this goes, probably sooner rather than later.

4.2.7. IB Docket 04-286, Recommendations Approved by the Advisory Committee for the 2015 World Radiocommunication Conference (ARRL Comments filed September 12, 2014).

Brennan Price prepared and filed over his own signature comments for ARRL in this proceeding on September 12, 2014. I was not involved in that filing because the draft was not prepared in the time frame that I was promised (twice) by Brennan, and there was not sufficient time for me to review it when it was finally delivered while I was out of the office on vacation. I have no information about this filing to provide to the Committee as the result beyond what Brennan sent to the Board on September 29.

4.3. Open items with no FCC action since January, 2014 Board Meeting

4.3.1. ARRL Petition for Rule Making to Amend Parts 2 and 97 to Create a New MF Allocation for the Amateur Service at 472-479 kHz. (Status of 472-479 kHz Petition filed November 29, 2012); ***and*** ET Docket 12-338, Amendment of Parts 1, 2, 15, 74, 78, 87, 90 & 97 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva 2007), Other Allocation Issues, and Related Rule Updates; (135.7-137.8 kHz allocation and 1900-2000 kHz primary allocation).

ARRL's November 29, 2012 Petition for Rule Making proposing the allocation of the band 472-479 kHz to the Amateur Radio Service domestically, as per the WRC-12 action creating the international allocation to the Amateur Service, still has not been acted on by OET. We are promised an order and Further NPRM in Docket 12-338 which will dispose of the 135.7-137.8 kHz allocation proposal. As I informed the Board in July, I tend to (somewhat pessimistically) anticipate that we will be denied access to the LF band (135.7-137.8 kHz) in the order part of the long anticipated document, but that we will be successful in obtaining access to the MF band (472-479 kHz) allocation. Nothing appears on the "items on circulation" listing on the FCC web page about this matter yet.

4.3.2. WT Dockets 03-187 and 08-61; Effects of Communications Towers on Migratory Birds (No action since March, 2012 FCC report).

4.3.3. Pave Paws Radar Interference, 70 cm. Sacramento, CA area and Cape Cod, MA. AirMOSS at 70 cm; potential upgrade of Otis AFB radar.

4.3.4. ET Docket 13-84; Reexamination of RF exposure regulations. (FCC proposal to subject the Amateur Service to a "general exemption" table for conducting a routine environmental review of a proposed new or modified station configuration; exemption criteria as the preemptive standard as against more stringent state or local criteria.)

4.3.5. ET Docket No. 13-44, Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment; Amendment of Part 68 regarding Approval of Terminal Equipment by Telecommunications Certification Bodies (Reply Comments filed by ARRL July 31, 2013).

4.3.6. ET Docket 13-101; Receiver Performance Standards; Technological Advisory Council White Paper (ARRL Comments filed July 22, 2013).

4.3.7. WP Docket 08-63, ReconRobotics, Inc. Video and Audio Surveillance System at 430-450 MHz.

4.3.8. General Docket 14-25; Public Comment on FCC Report on Process Reform (Comments in response to Public Notice filed March 31, 2014)

5. Local antenna/RFI cases

5.1. Myles Landstein, N2EHG v. Town of LaGrangeville, NY. (Status Report)

I met Myles Landstein at the CLE Seminar I co-presented at the Centennial Convention and found him very engaging and thankful for our help with his case. Nevertheless, he promised me then an update from his attorney Jon Adams, relative to their pursuit (administratively and/or judicially) of Landstein's entitlement to reasonable accommodation of his Amateur antenna system. I have since then received nothing from Myles and have asked him for an update. Recall that the Town of LaGrange, NY has attempted to impose a cost prohibition on antennas. This case also offers the opportunity to challenge a very old New York State court case holding that Amateur Radio is not a normal accessory use to residential real property. The ARLDAC Committee has released the $10,000 funding grant to Adams' trust account. I am also awaiting from Adams a confirmation of the disposition of those funds.

5.2. Resolution of Gary Wodtke, WW8N v. Village of Swanton, Ohio Case.

This case was resolved very favorably to Gary Wodtke, WW8N. He prevailed at the appellate court level in a case in which he was successful in defending his entitlement to a substantial Amateur Radio antenna. The Town of Swanton, Ohio, with the backing of the Ohio Municipal League had filed a notice of appeal but it was deemed infirm and the appeal was dismissed as untimely. ARRL had agreed to file an amicus brief using a local counsel who was instrumental in passing the Ohio PRB-1 law (which was to be challenged by Swanton) so this outcome is extremely gratifying, even though resolved on procedural grounds.

5.3. Howard Groveman, W6HDG, and Poway, CA successful ordinance negotiation.

The hams of Poway, CA were successful in negotiating a new ordinance in the long-troublesome town of Poway that now entitles hams to antennas of 65 feet as a matter of right. This is a big win in an historically problematic municipality and W6HDG has benefited from the new ordinance directly. Kudos to San Diego land use lawyer Felix Tinkov for his good work on

this and for the dedicated hard work by Dick Norton and Marty Woll. This is a big win, and one that was desperately needed as guidance for other municipalities in southern California. ARRL contributed approximately $3000 toward Tinkov's fees in the process.

6. Other legal matters. (none come to mind)

7. Legislative matters

7.1 Status of Congressional advocacy of the "Regulatory Parity for Amateur Radio Communications Act of 2014" (CC&R Legislation; Report on advocacy efforts to date; consideration of strategies for remainder of 113th Congress).

I hoped by the time of the preparation of this memo, I would have a definitive report for you as to what Representative Greg Walden, W7EQI, will do by way of contacting FCC and telling them that they should apply the three-part PRB-1 test equally to all types of land use regulations, public and private, relative to Amateur Radio antenna installations. We have done everything we have been asked to do in order to encourage Walden to follow through on the plan created by Walden and his Subcommittee's majority counsel, David Redl, about a year ago.

We were asked by Redl to get the Bill introduced, which we did. We took awhile getting that done because John Chwat was unable to come up with a strategy to do it, except that we lucked into Josh Baggett, a ham and the Legislative Assistant to Representative Kinsinger of Illinois. It took awhile, but we got that done, and due to Dave Sumner's good rapport with Rep. Courtney of Connecticut, we finally got H.R.-4969 dropped. We were then asked to get around 30 cosponsors. We got approximately 60 so far who have committed, due to superhuman efforts from Mike Lisenco (a zealot), and also President Craigie, Dick Isely, Cliff Ahrens and several other outstanding advocates for the Bill around the Board table.

Frank McCarthy at TKG (and I can't say enough positive things about TKG; I wish we had retained them years ago…thanks Dave Woolweaver for the referral) is now setting up a meeting with Dave Redl to find out the next steps. We had a tentative meeting today but Redl cancelled (just as I was arriving at the Capitol for the 11:00 AM meeting) and so we hope to have that meeting tomorrow. I will have a report for you about next steps following the meeting with Redl, probably in person at the EC Meeting in Memphis.

7.2. Consideration of revisions to the 2009 Mobile Amateur Radio Operation Policy Statement [in view of *Moving Ahead for Progress in the 21st Century Act* (MAP-21) requirements] and State legislative issues.

I have a draft revised policy statement for your review and editing and approval. I will be sending a revised version around before the meeting which includes some edits from Cliff Ahrens and President Craigie.

The "Moving Ahead for Progress in the 21st Century Act" (MAP-21), Public Law 112-141 (2012) provides in part that in order to qualify for grant funds under a new Federal grant program to discourage distracted driving, a State must enact and enforce statutes prohibiting

"texting through a personal wireless communications device while driving" and any use of such a device by a driver under the age of 18. States whose statutes don't include these provisions do not qualify for grant funds under the program. The definition of "personal wireless communications devices" is a device through which "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services" are transmitted. That definition is sufficient to exclude Amateur Radio from the prohibitions, but not all States use that definition by any means. In many cases of State legislation, we have in the past relied on exemptions from the texting law specifically identifying Amateur Radio as an exempt activity. Our policy statement as it stands now includes references to exemption of Amateur Radio as an option.

The ONLY permitted exemptions under MAP-21, however, are as follows:

►a driver who uses a personal wireless communications device to contact emergency services;
►emergency services personnel who use a personal wireless communications device while operating an emergency services vehicle and engaged in the performance of their duties as emergency services personnel; and
►an individual employed as a commercial motor vehicle driver or a school bus driver who uses a personal wireless communications device within the scope of such individual's employment if such use is permitted under the regulations promulgated pursuant to section 31152 of title 49.

Therefore, exempting Amateur Radio from State texting statutes is not possible if the State involved wants MAP-21 funds, and of course they all do. So the only option now in dealing with State legislation is to make sure that the definition of devices that cannot be operated while mobile is sufficiently clear that it does not include Amateur Radio *in the first place*. We must modify our policy statement to reflect this change in Federal law and that it includes the MAP-21 definition of personal wireless communications devices. I hope my revised draft does that.

7.3. State legislation re tower lighting and painting ("crop-duster" statutes in Idaho, Colorado, Wyoming and Washington State; status of FAA position on preemption).

Statutes in some western states that have rural agricultural areas are concerned that short towers, those between 50 and 200 feet and not near airports, do not have to be lighted or painted. They are worried that low-flying aircraft will hit those towers. All of these legislative enactments are premised on the assertion that "towers under 200 feet in height are not currently regulated by the federal aviation administration and, consequently, may not have certain markings that are required for taller towers." *That is, I would suggest, a false premise*. Towers under 200 feet in height ARE regulated by FAA (and notification to FAA is called for by the FCC) if a tower less than 200 feet is to be located in an area that FAA has determined constitutes a danger to air navigation: that is, where the towers are located within the glide slope of an airport or heliport. See, 47 C.F.R. 17.7. The glide slope is 100-to-1 for a horizontal distance of 6.10 kilometers from the nearest point of a runway of an airport or heliport, and less for towers closer to the airport or heliport. The point is that FAA *has in fact exercised its preemptive, comprehensive Federal jurisdiction* to protect air traffic as necessary in a reasonable exercise of its discretion. The comprehensive regulation of tower height, marking and lighting by FAA (in conjunction with

FCC) includes a scheme of painting and lighting that leaves no room for the States to supplement it.

Congress' purpose in granting the FAA and the FCC joint authority to impose tower painting and lighting requirements is clear: to reduce any potential hazard towers might impose to air safety. In litigation over congressional intent, the Supreme Court has concluded that *Congress intended to preempt states with respect to aviation safety*. (See City of Burbank v. Lockheed Air Terminal, 411 U.S. 624, 639 [1973].)

Section 1108(a) of the Federal Aviation Act, 49 U.S.C. 1508(a), provides in part, "The United States of America is declared to possess and exercise complete and exclusive national sovereignty in the airspace of the United States . . ." By §§ 307(a), (c) of the Act, 49 U.S.C. 1348(a), (c), the Administrator of the Federal Aviation Administration (FAA) has been given broad authority to regulate the use of the navigable airspace, 'in order to insure the safety of aircraft and the efficient utilization of such airspace . . .' and 'for the protection of persons and property on the ground . . ..'

To carry out Congress' wishes, the FCC and FAA adopted a single, unitary, federal approach to tower marking and lighting. That approach is to be departed from only where the standard specifications "are confusing, or endanger rather than assist airmen, or are otherwise inadequate." (47 C.F.R. § 17.22). In such case, "the (Federal Communications) Commission will specify the type of painting and lighting or other marking to be used in the individual situation."

Having such a unitary approach, departures from which the FCC and or FAA must approve, is critical to preserving air safety. Pilots could potentially become confused or disoriented when tower marking and lighting departs from the standard specifications or where the lighting or marking of existing towers is significantly changed. As one federal court observed in a similar situation, "[p]ermitting the states to diffuse . . . [the FCC's and FAA's] power . . . would frustrate Congress' intent and erode the effectiveness of the FAA and FCC to jointly control the construction of tall and perhaps threatening radio broadcast towers." (See *Big Stone Broadcasting*, 161 F. Supp. 2d 1009, 1019 [D. S.D. 2001].) Accordingly, state or local marking and lighting requirements should be viewed as interfering with the federal objective of ensuring the safety of air navigation through a unified federal approach to tower lighting.

Two states that have dealt with this issue (Washington State and Idaho) specifically exempt, among other towers, Amateur Radio antennas and support structures. The Washington State exemption reads as follows: "Any structure for which the primary purpose is to support telecommunications equipment, such as equipment for amateur radio and broadcast radio and television services regulated by the federal communications commission…" The State of Idaho did, in 2013, pass legislation (Senate Bill 1065) that amended a prior statute regulating short towers in order to exempt Amateur Radio antennas therefrom. The definition of towers subject to the State regulation on its face is similar to that in the Colorado legislation, and it arguably exempts Amateur towers:

"Any temporary or permanent guyed tower fifty (50) feet or more in height that is located outside the boundaries of an incorporated city or town on land that is primarily rural or undeveloped or used for agricultural purposes, or that is primarily desert, and where such guyed tower's appearance is not otherwise governed by state or federal law, rule or regulation, shall be lighted, marked and painted or otherwise constructed to be visible in clear air during daylight hours from a distance of not less than two thousand (2,000) feet." (Emphasis added)

All Amateur Radio antennas are regulated and governed by Federal law, even if they are less than 200 feet in height and not located within the specified glide slope of an airport or heliport. See, 47 C.F.R. §97.15. To the extent that a State painting and lighting requirement for short towers unreasonably increases the cost of a tower installation or otherwise precludes the installation, it violates PRB-1. It is well-established that Federal regulations have the same preemptive effect as Federal statutes.

Given the foregoing, crop duster statutes are arguably preempted by Federal law. We anticipate additional similar legislation in other states, however. I have asked of the General Counsel's office at FAA what their position is relative to the jurisdiction of the states over ground structures that might endanger low-flying aircraft. They have not yet responded and I am working with Frank McCarthy to get an answer to my question through Congressional inquiries (a more reliable means of getting the agency's position).

9. Organizational Matters

9.1. Studies directed by the Board at its July 2014 Meeting.

9.1.1. Minute 27, re Bylaw establishing Vice Directors' right to be present at all Board Meetings unless a majority of Directors votes otherwise.

As to Minute 27, suggesting a Bylaw that would (absent an affirmative vote to exclude) entitle Vice-Directors to attend all meetings of the Board including Special Meetings, Electronic Meetings and meetings of the Committee of the Whole, I would suggest that the Board should not want to reverse the presumption that now applies, which would have the effect of limiting the Board's prerogative to exclude all (or in some cases where there may be a conflict of interest, some) Vice Directors on a case-by-case basis.

The motion of Mr. Rehman reads in relevant part as follows:

"Unless a majority of the Directors vote to exclude the Vice Directors from a specific meeting, Vice Directors have the right to be present at all formal meetings of the Board including Special Meetings, Electronic Meetings, and meetings of the Committee of The Whole."

Right now, as a default, Vice Directors are entitled to attend meetings of the Board except that they are excluded from some portions of some Board meetings and they are not always included in Special Meetings or Committees of the Whole, depending on the context. The Board now has the prerogative to include or exclude Vice Directors from particular meetings or parts of meetings. In my view, this is as it should be. It is not to be forgotten that as a matter of

law, Vice Directors are very clearly not members of the Board and as such they have no entitlement to attend any particular Board meeting or portion of any meeting. There may be good and sufficient reasons why a particular Board meeting might necessitate (at least in the view of some Directors) the exclusion of Vice Directors from a meeting or a portion of a meeting.

Now, the Board can include or exclude (as it sees fit) the Vice Directors in a given situation. Why would the Board want to create a presumption that the Vice Directors are entitled to attend all meetings? What is gained by that? Maintaining the flexibility that the Board now has seems to me to be an overarching goal. Entitling the Vice Directors to attend unless affirmatively voted out of a given meeting seems to me to be a pointless effort to limit the flexibility that the Board now has. Robert's Rules of Order at Chapter XX, Section 60, specifically states that a society has the right to determine who may be present at its meetings. To limit that flexibility by creating presumptions seems to me to be contrary to the Board's best interests.

9.1.2. Minute 28, re: election of the Ethics and Elections Committee

It seems that the means by which the elections and ethics committee members are selected (i.e. by appointment of the President or by election by Board members) is in large part a policy matter rather than a legal matter. However, I will say this: to the extent that the Elections and Ethics Committee performs adjudicatory functions (i.e. factual determinations and conclusions about possible conflicts of interest) their role is akin to that of a trier of fact. It makes little sense to me to elect people who perform quasi-judicial functions because that introduces elements of politics into the process. Like judges, those who are appointed are less beholden to any constituency than are those who are elected. My father, the long-time general counsel of the administrative office of the Federal courts, abhorred state judicial elections, which he said discourage impartiality and encourage cronyism: the antithesis of the judicial function. For precisely the same reasons, it seems best to have appointed, rather than elected, members of the E&E Committee.

9.1.3. Minute 37 re: Technician HF digital privileges

If the EC agrees to this proposal, it is not a difficult matter to prepare an argument in favor of it and file a petition asking for these expanded HF operating privileges for Technician Class licensees. However, there are some good arguments against significant expansion of the digital operating privileges associated with a Technician Class license. Principal among these is that the Technician Class license is the current entry level license for many, probably most hams. The examination for the Technician Class license must be sufficiently comprehensive as to address the theory and regulations behind the operating privileges that are associated with the license class. To permit substantial HF digital operating privileges of necessity, notwithstanding the operating privileges already afforded to them (HF telephony at 10 meters, CW operating privileges at HF, digital privileges at VHF and above) necessitates a more comprehensive examination for the entry level license, which could discourage newcomers.

Secondly, the addition of these privileges for the Technician class license brings the Technician Class and the General Class licenses very close together in terms of operating privileges and could discourage upgrading.

Finally, additional operating privileges for Technician Class licensees could very easily cause FCC to consolidate the two license classes, eliminating one due to its similarity to the other.

9.2. Review of and proposed revisions to Bylaw 45

The Executive Committee has not been tasked with the review or revision of Bylaw 45 dealing with conflicts of interest of Board members. Although I offered to President Craigie to draft up a series of alternative iterations of Bylaw 45, and I am happy to do so at the EC's direction, I would suggest instead that perhaps the best way to address that matter collegially might be to have a drafting committee appointed by the President offer some suggestions to the Board in January. I recall with a great deal of fondness a drafting committee that was appointed by the then-President of ARRL to respond to an FCC proposal to rewrite the Part 97 regulations in, I think, the 1980s. FCC had decided to write so-called "plain language" rules for Part 97 and the Board at that time wanted no part of that. So a drafting committee was appointed, which met in person over a very busy weekend somewhere in the Pacific northwest, and prepared a comprehensive and complete rewrite of the Part 97 rules, soup to nuts. It seems to me that a similar strategy might be pursued in this situation. Such a methodology would include a holistic review of ARRL Bylaws that are related, including in this instance, for example, varied recusal provisions where a Board member or a Vice Director may have a conflict of interest.

I will be pleased to address any questions you may have about this report before or during the upcoming meeting.

Respectfully submitted,

Christopher D. Imlay

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Christopher D. Imlay
General Counsel

APPENDIX A
(ENFORCEMENT BUREAU BRIEFING MEMO FOR JULY 2014 ARRL MEETING)

BRIEFING MEMO
ARRL, the national association for Amateur Radio
Meeting with Travis LeBlanc, Esq.
July 10, 2014

ARRL would like to bring to Mr. LeBlanc's attention the following points and issues during our 30-minute meeting at 2:00 PM on July 10, 2014. Present on behalf of ARRL will be Christopher D. Imlay, General Counsel, ARRL and Riley Hollingsworth, Esq., retired FCC Special Counsel for Amateur Radio Enforcement. Many of these points and issues were discussed in ARRL's filed comments in GN Docket 14-25, a copy of which is attached to this memo.

► ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated, is the sole national representative of and advocate for the Amateur Radio Service in the United States. ARRL is a Connecticut non-profit association celebrating its centennial anniversary this year.

► The Amateur Service is stronger and contributes more to the science and art of radio than ever before. There are more than 720,000 licensees of the Commission in the Amateur Service. ARRL membership is approximately 170,000.

► There is a long history of scrupulous rule compliance in the Amateur Radio Service. This widespread attitude is critical in a Service in which virtually all frequencies in all bands are shared; where there is no exclusivity in channel use; and where there is long distance, often worldwide propagation at any given time.

► Few Commission resources are needed in order to ensure a high level of rule compliance in the Amateur Service. However, due to shared spectrum, long-distance propagation and the absence of secrecy of content in this Service, a very few rule violators are very visible. The longer an interferer is allowed to perpetrate (for example) malicious interference without visible sanctions, the more the violator is encouraged to continue the behavior and the more likely that others may emulate the violator. Conversely, the faster and more visibly the Commission acts, the greater the level of deterrence for violators and to other potential violators. So, what little FCC enforcement is necessary must be both (1) timely, and (2) visible.

► ARRL participates in and sponsors (in partnership with the Commission) the "Official Observer" or "Amateur Auxiliary" program: a legislatively authorized program that the Commission has implemented pursuant to a written agreement which provides 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 case of minor infractions, informal notices (in the nature of helpful reminders) 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 serious or repeated rule violation cases, recordings of on-air communications of

the perpetrator are made by 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. The information gathered by OOs is not used directly as evidence by the Commission, but 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. There is very little communication between the Commission's EB staff on the one hand and the OOs, OOCs and ARRL staff on the other. The program is underutilized and the work of the OOs normally goes unrecognized now.

► The underpinning of compliance in the Amateur Service is the *perception* of an active enforcement presence that creates deterrence and promotes compliance. This perception was present in the Amateur Radio enforcement program at FCC between 1998 and 2008, when the program worked exceptionally well. Compliance during those years was successful 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) by making available to the Amateur Radio media everything that was done by that office and the publicizing of those actions, except where privacy rights would be violated or confidentiality had been requested.

► The program was dependent on a reasonable level of autonomy of the Bureau's 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. ***That autonomy does not now exist in the program***, and the current staff person charged with Amateur Radio enforcement is under severe constraints that make her good, diligent work largely invisible. The limitations imposed on the visibility of enforcement actions in recent years have significantly reduced the effectiveness of the program.

► Shortcomings in the Commission's web site relative to Amateur Radio enforcement actions; staff travel bans; the relative invisibility of enforcement staff at Amateur Radio events; and severe limits on the autonomy of that staff person have created delays, and therefore have perpetuated the perception that there is no effective, ongoing enforcement in the Service.

► In the February, 2014 Report on Process Reform at the Commission prepared by the Staff Working Group and Ms. Diane Cornell, there were three important recommendations that bear directly on the issue of Amateur Radio enforcement and the autonomy of the staff person charged with it:

"Bureaus and Offices should devise their own sub-delegation arrangements, although the level of specificity would vary in different environments. The guiding principle should be to push decision-making down to the lowest level possible, consistent with appropriate quality control."

"Delegating decision-making to lower levels within Bureaus and Offices would certainly streamline the review process and expedite decision-making. The staff could, however, take additional steps to further streamline review."

To further streamline review, Bureaus and Offices should evaluate their internal processes with the aim of reducing the number of managers within any particular Bureau/Office

organizational unit (*e.g.*, branch, division, bureau front office) who review any given decisional document. Reviews of less complicated/controversial matters should be especially streamlined. Reviews at lower levels should control for quality as well as substance, whereas reviews at higher levels should focus on consistency with policy objectives while ensuring overall quality control and consistency…"

► The failure to resolve two longstanding (i.e. years old), very visible cases of malicious interference (one involving several New York City area VHF repeaters and the other a racially motivated high-frequency case in the Southwestern U.S.) perpetuates those cases and encourages others. There was in the latter referenced case a NOV issued June 5, 2014 to one of the alleged violators but that information is not listed on the FCC web site and no publicity has attached to it in the month since its release.

► ARRL does not urge a significant increase in the dedication of resources to Amateur Radio enforcement. It does ask, however 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 and promote the level of deterrence that should exist in the Amateur Service and to reverse a disturbing downturn in compliance since about 2009. The visibility of the program must be increased in order to maximize the deterrence value of the work being done now.

► The Commission has failed 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 to cooperatively resolve. In ***none*** of these cases, some of which have dragged on for a decade or more, has the Commission issued a Notice of Apparent Liability or assessed a monetary forfeiture or other sanction.

► The concepts of visible enforcement and deterrence should be brought to bear in the area of power line interference cases in particular and Part 15 interference in general. The Bureau's processes are currently not publicized, and interference cases are effectively terminated without actual resolution of the underlying problem. Power line interference is a widespread 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 and have no idea what causes it or how to fix it. They simply utilize other media.

► There have been some ***notable*** improvements in enforcement related to the Amateur Service in recent months, for which ARRL is grateful. Indeed, the trend is positive. Recent actions include updates to the FCC web site listing of Amateur Radio enforcement actions (after nine months in which no updates occurred despite repeated requests by ARRL); a June 5, 2014 NOV, apparently related to the racially-motivated malicious interference case in the Western U.S. (though there are other perpetrators who have not been cited to date); an April 24, 2014 Citation and Order to a user of an RF "grow light" ballast in Washington State; and a 2014 NAL issued to a Texas Amateur Radio licensee for intentional interference in a high-frequency radio band, which resulted in a license surrender agreement. ARRL appreciates the improvements that have occurred since you began your tenure at EB.

► ARRL looks forward to an active partnership with your office going forward, so as to maximize the value of the good and effective staff work that is being done by the Bureau, and to minimize the resources necessary for our largely self-regulating radio service.