Document No. 10

REPORT OF THE GENERAL COUNSEL TO THE BOARD OF DIRECTORS

July, 2016
Windsor, Connecticut

Christopher D. Imlay, W3KD
Booth, Freret & Imlay, LLC
14356 Cape May Road
Silver Spring, Maryland 20904-6011
(301) 384-5525 telephone
(301) 384-6384 facsimile
W3KD@arrl.org

CONFIDENTIAL, ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
NOT FOR DISCLOSURE

TABLE OF CONTENTS

Greetings. It is my privilege to submit the following report to the Board of Directors on legal and regulatory matters in which this office has been involved since the last meeting of the Board in January of 2016 in Windsor. The following comments are attorney-client privileged information and work-product, and should be considered confidential, restricted to Board members, Vice Directors, and Board meeting attendees only. Please do not disclose this document or any part of it otherwise.

I. FCC and Regulatory Matters

A. Overview of Legal and Regulatory Matters.

I want to discuss in this initial overview part of this briefing memo our legislative effort on H.R. 1301 and S. 1685; the status of our effort to improve FCC enforcement; and ARRL governance issues.

1. Legislation. I have had an opportunity to review and contribute in an editorial capacity to Mike Lisenco's excellent and comprehensive report to the Board about the current status of our legislative effort with the Amateur Radio Parity Act. Little time need be taken here to restate any part of that Report, with which I agree in all respects and which I hope that you will read in detail.

I do have a few observations however. I have noted in my previous Board report in January of this year that there are tremendous obstacles that are inherent in the legislative process that we have no choice but to deal with as best we can and simply hope for the best. This is not a process over which we have much direct control and the difficulty in getting a bill passed in this Congress especially is literally overwhelming. Last week, Frank McCarthy and I met with the offices of both Hawaii Senators, one of whom (Senator Schatz) had voted against S. 1685 when it came for markup in the Senate Commerce Committee. We met with Shelby Boxenbaum, Counsel for Senator Hirono, and spent quite a while briefing her on our legislation. She asked a lot of good questions and ultimately said that we appeared to be very close to getting this legislation passed. She described this as a "miracle in this Congress." She said that almost no one this year can say that they have gotten as close as we have to getting legislation passed and that we should consider ourselves to be extremely fortunate and proud of what we have accomplished to date regardless of what happens at the end of this Congress.

I have heard a few criticisms of the Substitute Amendment that we hammered out with CAI as a matter of necessity. I believe that none of these criticisms is at all well-taken. One that has popped up a few times is that we are creating an obligation to notify an HOA and obtain consent from an HOA before installing an antenna in a deed-restricted community. Therefore, critics say that if our legislation passes in the substitute amendment form, and if a ham lives in a deed-restricted community and has installed (apparently without HOA approval) any type of outdoor antenna, they would be in violation of "Federal law" if they don't report that unapproved antenna to the HOA. Nothing could be further from the truth. Here's why:

1. The legislation, if we are fortunate enough to get it to pass, does not by itself impose any obligation whatsoever on any individual or any HOA. It simply calls on

FCC to implement the terms of the legislation. So if the Bill passes, it does not have any effect at all on any individual ham. It is only an instruction to the FCC to enact rules permitting Amateurs to apply to an HOA for an antenna.

2. If the Bill passes and the FCC does as Congress instructs and enacts provisions that call for HOAs to permit effective outdoor antennas for all hams, the rules would apply only proactively, and only to those hams who want to take advantage of it. So, if I have an HOA-unapproved antenna at my residence and I don't want to take advantage of the new FCC preemption policy, I don't have to do anything at all. The FCC will not come knocking on my door and tell me that I am violating the FCC rule that requires notification of an HOA of my existing antenna because FCC doesn't care at all about that.

3. It is only where a ham is not permitted to install an antenna and wants to take advantage of the preemption policy and where the HOA wants to require a notification and prior consent requirement that there is any application process. If a ham is content with her or his unapproved antenna and decides that keeping that is preferable to negotiating with an HOA, then there is nothing that the Federal government is going to do about it. The HOA might discover an unapproved antenna however, and cite a ham for violating the covenants if the covenants already require prior approval of the HOA or if the covenants preclude all outdoor antennas, but nothing in our Bill or in the FCC's implementation of it would make that situation any worse than it is. Instead, it would make the situation a lot better for that ham, because the HOA could not preclude an effective outdoor antenna. They would have to approve one. And yes, the ham would have to notify and apply for approval, but that process is no different than if a ham wanted to get a building permit for an antenna from a municipality.

The bottom line is that the "violation of Federal law" argument is a complete red herring. It is not an issue and it is not a problem. The same is true with other criticisms of the Substitute Amendment. The legislation would be a huge positive accomplishment for Amateur Radio and for thousands upon thousands of radio Amateurs if we can get it passed.

I am aware that at least two Board members and at least two vice directors are of the sincerely held view that this legislation is flawed in either major or minor respects. I vehemently disagree with that assessment and if offered the chance to debate it at this upcoming meeting, privately, or during the meeting, I would be pleased to do so. Whether or not the legislation is flawed as a matter of fact however, it is notable that during the twists and turns of the three-month negotiating process with CAI (which had fits and starts as all such efforts do), we have been very careful to seek guidance from the Executive Committee for all changes and we have received the authority to proceed after full and complete disclosure of the situation. That being the case, I would suggest that the duty of loyalty that binds all members of our Board (and all other members of all nonprofit boards) firmly obligates ARRL Board members and vice directors to avoid taking public positions or taking actions contrary to the effort. This is a good example of the precept that most children are taught: if you have nothing nice to say about the Board’s position, say nothing at all. We can’t ask members of a division to support our Bill if the

Director or vice director from that Division is making public statements denigrating the Bill. We can't have members writing their members of Congress saying that they don't support the Bill because their Division leadership is talking the Bill down. ARRL organizationally is entitled to your loyalty and you are not at liberty to withhold it. ARRL Directors and Officers are entitled to debate the matter at meetings and presumably Directors will bring their vice directors' views to the table *before* the position of the Board is determined. But once policy is determined by either the Board or its Executive Committee, individual Board members and vice directors are not at liberty to thereafter disparage the Board's approved initiatives, despite any personal reservations about them. *Please avoid this*. Respect the collective decision of the Board. If you can't do that and at the same time feel as though you are acting consistently with your own ethical precepts, the law of nonprofit organizations as I understand it compels you to resign.

2. Enforcement. Notably, Minute 39 of the July, 2015 Board meeting stated the Board's policy that substantial, timely improvement in enforcement is an issue of the highest urgency. The CEO and this office were directed to develop and, under the supervision of the Executive Committee, execute a plan to improve timely and visible enforcement in the Amateur Radio Service. The plan was to include identification of the most urgent enforcement cases; summarize evidentiary input to FCC to date in each case; presenting the summaries to the FCC Enforcement Bureau staff and FCC Commissioners; other Federal agencies with jurisdiction over rule violation instances; and as necessary, Congressional oversight authorities. We were to urge the fast, timely resolution of the cases listed. The plan was also to include plans for improved publicity of enforcement actions which are not being effectively publicized by FCC itself; options for providing ARRL resources in the direct resolution of individual cases; and plans to cause FCC to make effective and direct use of evidentiary materials gathered by volunteers in the Amateur Service. I reported to the Board in January of this year that undoubtedly, too little progress has been made on this subject to date. That remains true to the present time. We did prepare and provided to the Board in January an Enforcement Plan that was submitted to the Executive Committee in September of 2015. The EC urged that the plan be further developed and amended, but over the short term, several steps included in the Plan should be initiated. Briefly summarized, those were as follows:

> 1. A letter/brief should be prepared, addressed to EB Chief Travis LeBlanc and to each of the FCC Commissioners, with a copy to Congressman Walden. The letter should briefly trace the history of Amateur Radio enforcement and discuss the current inadequate enforcement situation in frank, direct terms, and request rapid, visible enforcement action in (1) the WARFA Net case; (2) the New York repeater jamming cases; and (3) action on those forfeiture cases and pending license renewal cases that are more than a year old which have not been followed up on.
>
> 2. We should approach the Office of Engineering and Technology (specifically Julius Knapp and his front office staff) and the Enforcement Bureau staff in person (together or separately) and ask for action on the grow light complaints and the power line complaints which we filed with both EB and OET.
>
> 3. We should more aggressively approach allies, including the National Association of Broadcasters and APCO and enlist their help on a multiple-complainant basis where there is some identity of interest.

The draft Plan also included more generalized, *longer term* recommendations. One of these is to revitalize the OO program, provided that FCC buys into an enhanced OO program and agrees to make some use of the volunteers' work.

I have reported to the Board previously of a series of important recent enforcement actions which have occurred since our advocacy effort began in earnest on enforcement improvement. These events include:

(1) Modifications to the FCC interference complaint filing system that facilitate the filing of Amateur Radio complaints through the electronic complaint filing system (directly resulting from ARRL advocacy efforts.)
(2) A July 22, 2015 Report and Order affirming a $22,000 monetary Forfeiture assessed in 2014 against Michael Guernsey, KZ8O of Parchment, Michigan for malicious interference, due to Guernsey's "long history of causing interference to other Amateur Radio operators."
(3) A December 18, 2015, $25,000 NAL against William F. Crowell, W6WBJ of California, for intentionally interfering with the WARFA net and transmitting prohibited communications, including music.
(4) The allegedly continuing "pulsed" enforcement plan being effectuated with respect to the WARFA net interference (initiated immediately by FCC following Rep. Greg Walden's urging of the FCC Commissioners in an oversight hearing; an effort initiated with Rep. Walden by ARRL).
(5) FCC investigation and inspection of the New York/Long Island repeater jamming problem due to legislative correspondence from Representative Peter King in January. Mike Lisenco spearheaded an OO-based monitoring effort, orchestrated by FCC. We are waiting for the issuance of a Notice of Apparent Liability to be issued by FCC on this case. Since that time, the unlicensed subject has been arrested and jailed twice, most recently for robbery and drug violations.

The Guernsey, KZ8O $22,000 forfeiture and the Crowe, K3VR $11, 500 forfeiture have been referred to the Department of Justice and put on a "fast track" for collection via civil action. Two other Notices of Apparent Liability (Hicks and Tolassi) issued last summer have been paid and closed**.** The problem with this process is that no "closing orders" are released by FCC in such cases and the opportunity for any deterrence value from providing news of the payments of the NALs is completely lost because no one can know the status of a paid NAL.

On the downside, the field office closings and field staff reductions have taken place. At least eleven engineers resigned or took "early out" opportunities. The new District Director in New York, an Amateur licensee has left the Commission for the Department of Energy. All three EB regional counsels have left the Commission. Two new hires were made, and as the result Laura Smith is about to be returned to Amateur enforcement but she has not been doing any of that for us for about six months. The field offices are demoralized.

As of February 26, 2016, Laura Smith reported to Riley Hollingsworth that the pulsed enforcement effort to address the WARFA malicious interference is ongoing and the engineer working on it, David Hartshorn in the San Francisco office is personally committed to taking

action against a list of licensees that are participating in the jamming, which Laura said is at least 6 more cases. First however, he had to work "on some higher priority cases."

No FCC action has been taken yet on our complaints filed with EB and OET about grow lights, ballasts and RF lighting marketing practices of Lowe's, Home Depot and Wal-Mart. However, Laura Smith reported to us that the staff at FCC believes that RF lighting issues are a large problem. Most recently, FCC's Laboratory released a document that discusses RF lighting device regulation. OET on June 17 issued a paper in its "knowledge database" on OET's web site discussing RF lighting devices and noting the radiated and conducted emission rules that apply to them. The rules, the notice says, are intended to avoid harmful interference to licensed radio services. RF LED lighting devices generate light by electrically powering semiconductor materials. Light generation for general illumination includes applications such as traffic signaling, roadway lighting, manufacturing processes, agriculture, etc. RF LED lighting devices intentionally generate RF energy via electronic power conversion or digital circuitry, but are not intended to radiate RF energy, so they are classified as unintentional radiators according to the FCC rules. RF LED lighting products today employ single or multiple LED chips, but can also include organic LEDs (OLEDs), polymer OLEDs, quantum dots, etc. In most cases, RF LED lighting devices employ either an independent or an integrated electronic driver that operates at RF frequencies similar to those used in digital electronic products.

As such, RF LED lighting devices are subject to the Part 15 rules for unintentional radiators, and are subject to the "verification" equipment authorization procedure. These devices are required to meet the line-conducted and radiated emissions limits in Rule Sections 15.107 and 15.109, respectively. In any case, however, FCC noted that operation of Part 15 unintentional radiators is subject to the condition that no harmful interference is caused, and that manufacturers and users should be aware that lighting devices are required to cease operation if harmful interference occurs. Radiated emission measurements must be performed at least from 30 MHz to 1000 MHz to adequately demonstrate compliance with Part 15 (§15.109). Routine radiated emissions measurements are needed under Part 15, based on the highest frequency generated or used in the device. FCC said that it had found that emissions from RF LED lighting devices are "non-periodic, broadband in nature, and are produced as a byproduct of the internal driver circuitry within the RF LED lighting device. These types of emissions have adequate energy and potential to generate radiated emissions well above 30 MHz."

The limits are higher for Part 15 LED bulbs than for Part 18 fluorescent and CFL bulbs, and local governments are purchasing LED bulbs in great numbers. Noise generated by street and traffic lighting can be widespread throughout entire cities. It may be helpful for Amateur clubs to commence a dialog with their local government which may be planning to deploy RF lighting devices throughout the town or county to make them aware of the Part 15 non-interference requirement.

On June 17, 2016 there was a meeting at ARRL HQ involving Laura Smith, Dan Henderson, Chuck Skolaut, Mike Lisenco, Ed Hare, Mike Gruber, Bob Allison and myself. Each of us had a topic of discussion with Laura, but the main purpose of the meeting was to strategize the restructuring and updating of the OO program, in view of the unavailability of the FCC Field offices to gather evidence in enforcement cases. We were under no illusion that the FCC would

begin to accept direct evidence from OOs, but we had to find a way to at least make the job of the remaining few field office personnel easier and more streamlined in Amateur enforcement cases. We found Laura very candid and forthcoming and she provided what I considered to be good, solid advice. The day was well-spent. We told her that we needed to ensure, before we re-energized our largely demoralized OO group and restructured it, that FCC would firmly commit to making reasonable use of it.

Laura began by advising us that the entire Enforcement Bureau is demoralized. She said that there is literally no manpower. A total of 13 staff members, all senior engineers, retired in 2016. Negotiations between the FCC employee's union and FCC management broke down and they are not even talking any longer. Very soon, Travis LeBlanc, the EB Chief who was brought in specifically to dismantle the spectrum enforcement division at EB, will be leaving FCC. It is unclear who the replacement will be. However, as of now, Laura suggests that we approach and meet with Bruce Jacobs, the current Chief of the Spectrum Enforcement Division of EB about an FCC commitment to utilize a revitalized OO program. Laura suggests that we offer a new MOU draft to Bruce dealing only with Amateur-to-Amateur interference. She suggests also that there be a separate MOU between ARRL and FCC addressing interference resolution for Part 15 and 18 devices and systems and the work that Kermit, Mike and Ed work on to resolve interference problems so that they do not have to refer them to FCC. To date, Ed, Mike and Kermit have worked on these cases with FCC on something of an informal basis. Laura suggests that we make that relationship more formal. We will be drafting up MOUs and meeting with Bruce Jacobs about those.

However, OET is in charge of Part 15 and Part 18 regulations and they will have to buy in to an enhanced Part 15 and Part 18 interference resolution protocols. We will have to have a meeting very soon with Julius Knapp at OET because OET was, according to Laura, responsible for FCC's failure to issue a Notice of Apparent Liability to the operator of an interfering Part 15 device in Woodinville, Washington. There, the FCC Field Office had investigated and written up a proposed NAL. OET killed it because they didn't want to create the precedent of post-point-of-sale enforcement for Part 15 devices. Once one such enforcement proceeding is brought, it would be impossible for FCC to get away from it.

We discussed with Laura the TAC Noise Study, about which we will be filing comments by August 11. In it, we will be noting the need to establish deterrence level Part 15 enforcement. However, this is a difficult argument to make given the effective dismantling of the enforcement staffing in the Spectrum Enforcement Division.

Ed and Mike discussed with Laura the problems with the online complaint process. Laura assured Mike that both Ed and Mike and Chuck can bypass the online complaint filing system and route all complaints to Laura directly. Chuck will submit OO materials to Laura.

Laura suggested to Ed that perhaps ARRL could sponsor a seminar for industry, perhaps together with UTC, the Utilities Telecom Council, concerning power line interference and resolution of cases. If Kermit, Ed and Mike think this is a good idea, we will contact Keller & Heckman, the law firm that represents UTC, to consider a joint seminar.

Laura advised that RF lighting complaints should be sent to Laura by ARRL for recirculation among the EB technical experts.

More generally, Laura suggested that the image of Amateur Radio operators at FCC generally could use some improvement. From the perspective of EB and WTB generally, upper level management has a poor image of Amateur Radio. Its image is defined by some of the "fringe crazies" as Laura put it. She suggests that Amateur Radio's image might better be represented by having Tom Gallagher meet with the Commissioners and Bureau Chiefs. This seems a good suggestion that we should follow up. It has been many years since ARRL leadership has made "Amateur Radio today" kinds of presentations to FCC Commissioners and Bureau Chiefs.

We had a long and freewheeling conversation with Laura about what a restructured OO program might look like. Some of the points Laura made about what we should consider doing to maximize the value of the OO program and what we might expect in return are as follows:

1. The basic qualifications vetting of a prospective OO should begin with the question "why are you here?" There should be a verbal interview, not a written essay.
2. Enforcement is about compliance, and achieving compliance, not to assess punitive sanctions.
3. We need to look for even geographic distribution of OOs.
4. Appointments should be time-limited.
5. There must be accountability of OOs to a direct supervisor.
6. Training could be by a series of webinars, a minimum number of which would be required in order to obtain or continue an appointment.
7. Anonymity is beneficial for several reasons. OOs should be given numerical designators instead of using their names.
8. There should be regular re-education and training on an ongoing basis.
9. Existing OOs could be entitled to participate in exclusive Webinars that Laura Smith would conduct with ARRL staff.
10. OOs need to understand that, just as enforcement in an individual case is not "personal" to FCC, it should not be personal to OOs either.
11. If an NAL is issued, OOs can expect that in general there will be a forfeiture order issued.
12. OOs should be educated on the rules generally though not in a highly esoteric way (what rules are enforceable and which are not?). What constitutes interference and what does not? Issues regarding nets and repeater operation should be dealt with, and it should be explained that there is no universal rule interpretation. It should be explained that there is no absolute interference-free operation guarantee in this Service and the details of malicious interference should be taught.
13. It should be noted that in order to justify an enforcement action, patterned behavior is called for. One-off events will never trigger an enforcement action. Neither will contest weekend interference complaints.
14. ARRL should accept only tenured licensees. The license class does not matter to Laura as long as the candidate is experienced in Amateur Radio.
15. Literate people conversant in English are required.
16. OOs should be warned away from spectral purity complaint issues.
17. The "good guy" notices should continue.

18. Because there are no current operable standards regarding profanity, indecency and obscenity, OOs should be waived off of those matters.
19. ARRL should tout better its Alternate Dispute Resolution system so that FCC can route cases through it.
20. As to evidence gathering, it should be done by recordings only.

This meeting set up a good procedural framework for our enforcement initiatives for the short term. It will allow a meaningful restatement of our overall enforcement plan. However it should be noted that FCC Chairman Wheeler is a short timer at FCC and so is LeBlanc. We should get as high-level a buy-in as we can. We will get started by meeting with Bruce Jacobs at FCC about a revitalized OO program and let him know of our requests for improved enforcement. Laura assures us that we will get a fair reception from Bruce.

I have expressed concern to the Board many times before about my perception of Laura Smith's interest in Amateur enforcement and I have questioned our ability to rely on her representations and predictions. However, during this meeting at Headquarters in June I found her entirely forthcoming and helpful and quite willing to give us her best advice. She is something of a pawn in the really unstable circumstances at FCC in the Enforcement Bureau generally and the Spectrum Enforcement Division specifically. She has a very negative attitude toward current top management at EB, as do I. Perhaps for that reason, she is more forthcoming with us now than heretofore. She has been placed on other work for the past six months and so Amateur enforcement has been dormant for most of that time. However, she assures us that she is coming back full time and as we move to adjust to the field office closings, she will I think work with us to help improve the process and the speed of service.

3. Board Governance. Much of the work of this office during the past six months has been dedicated to sorting out issues involving board governance, ethics issues and organizational problems with the field organization and certain field appointees. *This is not constructive*. It doesn't further the aims of the organization. It is like patrolling a levee that occasionally springs a leak. There is no way to have time to build up the levee and make it stronger and better and bigger if we have to fix internal leaks and defects all the time.

It is also frankly more than a bit disheartening to those of us who are dedicated to the legislative effort (which is closer to a full-time obligation than anything else I have worked on for ARRL over the past 37 years, with the possible exception of the 220 MHz battle and BPL) to work hard on Capitol Hill and at conventions and hamfests to get grassroots support for the effort, only to have members of our own Board talk down the legislation to third parties at critical times, making our effort much more difficult and limiting our sources of support.

ARRL has more advantages right now than perhaps at any prior time in its history. We have an *excellent* leadership team in place. We have an exceptionally competent and highly motivated new CEO with all of the skills, abilities and fresh ideas that we need to deal with an increasingly challenging business environment. We have a new President who each and every member of the Board respects; who is immensely popular and well-known in the Amateur Community as a whole; and who represents ARRL at conventions and hamfests with unprecedented ability to motivate and energize hams. We have highly competent and tenured

officers, both staff and volunteer. And we have a Board that is collectively the best we have ever had in my experience. *And yet we are not acting as a team*. We are not putting ARRL first. Parochial interests, political aspirations, and individual philosophical differences have to be put aside in favor of the duty of loyalty that every member of every nonprofit board owes, in our case to ARRL, organizationally. And the same is true with the field organization. There is no room for overbearing egotists in the field organization. Please, folks, let's deal together with the big issues and external threats such as the health of the Amateur Radio equipment industry; spectrum threats and opportunities; land use regulations; enforcement problems and the myriad of policy decisions that you have to address in order to make ARRL and Amateur Radio better. We have to do this with one voice. All of the pieces of the puzzle are on the table. Think about ARRL first. Don't squander the opportunity we have right now to leave a fine legacy for our successors.

B. Spectrum Allocation Issues.

1. ET Docket No. 15-99; 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 2012), Other Allocation Issues, and Related Issues.

The status of this proceeding is that we are waiting for a Report and Order adopting service rules for the 2200-meter band and an allocation and service rules for the 630-meter band. As I informed the Board last January, we received a call from FCC OET staff late last October. OET wanted to set up a meeting with ARRL, UTC and OET staff for the purpose of hammering out a notification process for Amateurs who live within a kilometer of a PLC-carrying transmission line that uses one of the two new band allocations. The good news was that FCC gave us a strong hope that the 630-meter band would be allocated to us in a Report and Order. The other good news was that, *at the time*, FCC was under a big push to get the Order in this docket out before January 1, 2016. Dave Sumner and I agreed to go to the meeting, but just before that, UTC's President died and the FCC meeting was postponed. Just before the Christmas holidays, we called OET and asked what happened to the meeting. They said that they had decided not to do that and told us confidentially that they intended to set up a process whereby *all amateurs* who wanted to operate on either band would notify UTC and then UTC would have 30 days to note an objection relative to interference protection to PLCs.

This was unacceptable to us. Dave Sumner asked that I contact UTC to see whether or not they had any interest in rescheduling the meeting at FCC. I told their attorney that OET had in mind for a Report and Order in the docket a notification requirement for all radio amateurs who wished to utilize either band. The process would be that all such radio amateurs would notify UTC of their intention to use either band, and the coordinates of their proposed station, and there would be a 30-day (negative option) period when UTC would be able to determine whether or not the amateur station is located within one kilometer of a transmission line carrying PLC and using any portion of either band, and register an objection as necessary. I explained that this is not acceptable to ARRL because it requires large numbers of notifications that are completely unnecessary to address any concerns that utilities have, and therefore is a vastly overbroad regulatory requirement. We said that UTC should not want such a broad burden

either. FCC had told us said that if ARRL didn't like their plan, we could either contact UTC and see whether or not UTC wanted to come in to OET with ARRL and talk about this, or else ARRL could just submit a written ex parte explaining our concern. I repeatedly contacted Brett Kilbourne, the attorney for UTC, who stonewalled me for weeks. Finally, UTC said that they were happy with what FCC planned and they didn't want to have a meeting about it. So we filed an ex parte statement explaining why such would be a ridiculously overbroad regulatory requirement on March 10, 2016. No action has been taken since that time, and the FCC has not yet placed a Report and Order in this proceeding on its list of items on circulation among the Commissioners, so an order is not imminent, and unlikely in the next three months.

What we are interested in settling on is a process whereby any radio amateur who wishes to use either band (assuming, which is likely that the 472-479 kHz band is in fact made available for Amateur Radio operation) and whose station is to be located within one kilometer of a transmission line carrying PLC has to make a notification to UTC of the intent to commence operations in either band. At that point, UTC can determine whether that PLC system is making use of all or a part of the amateur allocation and respond to the notification accordingly. We think that will be a very small, and workable number of notifications. By contrast, if the notification requirement applies to all radio amateurs who intend to use either band, UTC will receive an exceptionally large number of notifications, each of which would have to be reviewed by UTC, from radio amateurs who have some interest in using the band at some point but who are far from any transmission line, much less one carrying PLC and using a part or all of either band. UTC would be swamped, especially at the inception of the allocation availability.

2. ET Docket No. 15-170; Equipment Authorization Rule Change Proposals.

FCC released a Notice of Proposed Rulemaking July 21, 2015 proposing to update the rules that govern the evaluation and approval of radiofrequency (RF) devices. ARRL comments were filed October 9, 2015. No reply comments were necessary and none were filed. In our comments, ARRL asked FCC to clarify that Amateur Radio licensees may modify non-amateur equipment for use on Amateur Radio frequencies. Some hams expressed concerns that the proposed rules would inhibit post-sale modification of Wi-Fi equipment, which is often altered for use on Amateur Radio frequencies. We said that proposed rules requiring manufacturers to include security features to prevent network devices from being modified were problematic, to the extent that they would preclude hams from adapting network equipment for ham radio applications and that licensees should be permitted to modify any previously authorized equipment for use under Amateur Service rules.

In fact, the proposed rules differ only slightly from the current rules. Our comments also urged FCC to not apply any limitations for Software Defined Radios to SDRs intended for use exclusively in the Amateur Radio Service, as has been the policy for the past 10 years. We also made miscellaneous arguments regarding proposed changes to the FCC's equipment authorization rules, and expressed concern about abuse by unscrupulous importers and manufacturers of unintentional emitters. The only opportunity to preclude widespread sale and deployment of non-compliant RF devices, including unintentional emitters, is via the equipment authorization process. Some RF devices, such as RF "grow lights," now subject to the more

informal Verification process should be subject to Certification, owing to their substantial interference potential. Finally, we argued for additional labeling requirements for certain Part 15 and Part 18 devices. We discussed our FCC complaint about the marketing practices of various "big box" retailers, where non-consumer-rated lighting ballasts have been mixed in with consumer ballasts and other consumer products on display with no explanatory signage. Ballasts intended for industrial applications have higher permitted conducted emission limits in the Amateur Radio HF spectrum. We called on FCC to include a definition in Part 18 for the term "consumer RF lighting device," to provide a way to differentiate consumer devices from those intended for industrial or commercial environments. And we argued that FCC should consider reducing its Part 15 limits for lighting devices to correspond with the Part 18 lighting device limits between 3 and 30 MHz to reduce the RFI potential of LED bulbs now being widely marketed. LED lamps operate under Part 15 rules.

The docket is still open, though the comment periods are long past. On April 1, 2016 FCC issued a public notice in this proceeding acknowledging the publication of ANSI C63.26-2015 "American National Standard for Compliance Testing of Transmitters Used in Licensed Radio Services" and asked for comment on incorporating it into the Commission's rules by reference as part of this still-open rulemaking proceeding. The comment periods are closed on this supplemental notice as well. No FCC action is imminent and ARRL filed no comments on the April Public Notice.

3. ET Docket 13-213, Terrestrial Use of the 2473-2495 MHz Band for Low-Power Mobile Broadband Networks; Amendments to Rules for the Ancillary Terrestrial Component of Mobile Satellite Service Systems.

There is no new FCC action on this since the last Board meeting, except that there is on circulation a Report and Order in this proceeding. It has been on circulation since May 13, 2016. It should be issued sometime in the next month or two. We filed comments May 5, 2014 in response to an FCC Notice of Proposed Rule Making released November 1, 2013. FCC's NPRM was responsive to a proposal by Globalstar, Inc. The Notice proposed rules for the operation of the Ancillary Terrestrial Component (ATC) of the single Mobile-Satellite Service (MSS) system operating in the Big LEO (Low-Earth Orbit) S band. The proposed rules would permit Globalstar to provide low-power ATC using its licensed spectrum at 2483.5-2495 MHz under certain parameters, and also, using the same equipment, to access spectrum in the adjacent 2473-2483.5 MHz band "pursuant to the applicable technical rules for unlicensed operations in that band." The Notice also proposed, without justification, to depart from the consistent and longstanding rules governing interference from unlicensed devices to licensed radio services. Specifically, the Notice proposes that ATC, a component of a licensed radio service, would not be subject to interference protection from incumbent or future unlicensed devices in the same or adjacent spectrum. It is this reversal of longstanding FCC policy that ARRL's comments addressed. A licensed service cannot be subjected to a lack of interference protection from unlicensed RF devices.

4. **ET Docket 14-177, Provision of Mobile Services in the Bands above 24 GHz.**

This "millimeter wave" docket has relatively recently triggered a large number of extensive comments by major players in the mobile broadband industry. We filed comments January 15, 2015 in response to an FCC Notice of Inquiry examining the potential for the provision of mobile radio services in frequency bands above 24 GHz. The NOI asked for comment on the potential for use of millimeter wave (mmW) bands for mobile use, thus to develop technical standards for Fifth Generation (5G) mobile services. FCC asked what frequency bands above 24.0 GHz would be most suitable for this purpose. Our comments on the NOI were intended to head off any proposal to share Amateur mmW spectrum or give way to 5G mobile services or backhaul in support of 5G mobile services, but no Amateur spectrum was specifically targeted by the NOI at all. FCC released a Notice of Proposed Rule Making on October 23, 2015, comments on which were due January 26, 2016. The NPRM identified specific bands above 24 GHz that appear to be suitable for mobile service, and asks for comment on proposed service rules that would authorize mobile and other operations in those bands. There was no proposal that includes an Amateur allocation and no proposal that appeared to warrant any comment by ARRL.

However, there were more than 100 large filings by major corporations in the docket. Our review did not reveal any major threat to our allocations, so we made no *ex parte* filing. Brennan Price remains concerned about our 47-47.2 GHz amateur allocation, which is under consideration for allocation to the mobile service and has been identified for IMT at WRC-19, so it is potentially fair game for this FCC docket. We have not yet found any reference to it in any comment but we remain vigilant.

5. 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.

There is an important update concerning this still-open FCC Docket.

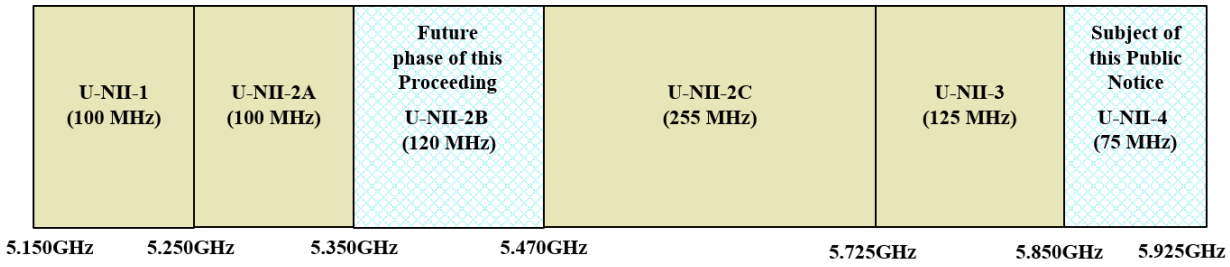
Comments were filed May 28, 2013 in this proceeding regarding the 5850-5925 MHz band. FCC's Notice of Proposed Rulemaking in this Docket, released February 20, 2013 would revise the Part 15 rules governing Unlicensed National Information Infrastructure (U-NII) devices in the 5 GHz band. These devices use wideband digital modulation techniques to provide a wide array of high data rate mobile and fixed communications for individuals, businesses and institutions including Wi-Fi-enabled radio local networks, cordless telephones, and fixed outdoor broadband transceivers used by wireless internet providers. 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. FCC proposed 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.

There have been negotiations ongoing between mobile service providers and Intelligent Transportation Service entities about settling the dispute about 5850-5925 MHz. Our effort in

this proceeding has been to retain the Amateur secondary allocation *in that segment*. On April 1, 2014, FCC released a First Report and Order in the Docket, which increased the utility of the 5 GHz band where U-NII devices operate, and modified certain U-NII rules and testing procedures to ensure that U-NII devices do not cause harmful interference to authorized users of the band. The extended the upper edge of the 5.725-5.825 GHz (the so-called U-NII-3) band to 5.850 GHz and consolidated the provisions applicable to digitally modulated devices so that all digitally modulated devices operating in the U-NII-3 band will operate under the same set of rules and be subject to the new device security requirement. The consolidated rules require the more stringent out-of-band emissions limit formerly applicable only to U-NII-3 devices in order to protect Doppler Weather Radar and other radar facilities from inference. We are still waiting for a decision on 5850-5925 MHz.

By a June 1, 2016 Public Notice, the Commission invited interested parties to update and refresh the record on the status of potential sharing solutions between proposed U-NII devices and Dedicated Short Range Communications (DSRC) operations in the 5.850-5.925 GHz (U-NII-4) band. DSRC uses short-range wireless communication links to facilitate information transfer between appropriately-equipped vehicles and appropriately-equipped roadside systems ("vehicle to infrastructure" or "V2I") and between appropriately-equipped vehicles ("vehicle to vehicle" or "V2V"). In the Public Notice, FCC discussed efforts to date by the Commission, the Department of Transportation (DoT), and the automotive and communications industries to evaluate potential sharing techniques. In August 2015, the DoT released a DSRC-Unlicensed Device Test Plan that described tests to characterize the existing radio frequency signal environment and identify the impacts to DSRC operations if unlicensed devices operate in the 5.850-5.925 GHz band. FCC wants updated comment on the U-NII and DSRC sharing options.

The following graph shows the current 5 GHz U-NII bandplan:



What is at issue now is only the 5.850-5.925 GHz band, but of course there is an Amateur allocation in the entirety of 5650-5925 MHz. The 5850-5925 MHz segment is allocated on a primary basis to the Mobile and Fixed Satellite Services for non-Federal operations, and to the Radiolocation Service for Federal operations. The band is also allocated on a secondary basis to the Amateur Service. FCC doesn't say much about Amateur use of the band except the following reference to the allocation status and cites Part 97 rules as well:

> *Amateur Radio*. Amateur service stations are permitted to transmit in the 5.850-5.925 GHz frequency band on a secondary basis. Amateur stations transmitting in this frequency band must not cause harmful interference to, and must accept interference from, stations authorized by the Commission and other nations in the

mobile and fixed satellite services, and also stations authorized by other nations in the fixed service.

The comment period for the "refreshing of the record" ended June 7. We had no input on the DSRC/U-NII sharing issue and had already done what we could to preserve Amateur access to the band. However, we will review the comments filed in response to the June 1, 2016 Public Notice and see if any further defense of Amateur Radio is called for before the reply comment date of July 22, 2016. We do not anticipate any need to file reply comments but this is not yet clear.

6. Pave Paws Radar and Amateur Interaction, 70 cm.

Dan Henderson has had several discussions in the last six months with Dave Pooley, Spectrum Manager for Air Force Space Command (AFSPC). The upgrade of the Cape Cod Pave Paws radar site is ongoing, with a targeted completion date in 2017. This will bring the Cape Cod facility to the same operational standards as the Beale AFB site in northern California. At the request of AFSPC, Dan was in contact with the 70cm frequency coordinator for northern California (NARCC) to try to determine whether or not there had been a resumption of ATV stations on the band in proximity to the Beale site. No ATV repeater or similar station was detected by NARCC. The Air Force will schedule testing sessions at the Beale site in the relatively near future to try and determine the source of new interference in the band. During recent testing at Cape Cod, ARRL was contacted by AFSPC to see if we could assist in identifying a new type of interference. The ARRL provided some information which helped the testing unit on base identify a local, non-amateur source of the problem.

There has been a change of command at the Cape Cod site, and Dan, accompanied by Tom Gallagher, will be making a site visit soon.

7. ET Docket 15-26, Vehicular Radars in the 76-81 GHz band.

FCC has taken no action in this proceeding dealing with the 77-81 GHz Amateur allocation since the last Board meeting. There was in December of 2015 an oral *ex parte* presentation by Mercedes Benz USA about this FCC open docket on automotive radars in the 76-81 GHz band. The Mercedes Benz delegation to lobby for the automotive radar allocation argued as follows:

1. 77-81 GHz should be allocated to automotive radar on a primary basis and regulated under Part 95.
2. Fixed operation should not be permitted, at least until compatibility analyses are concluded.
3. The 24 GHz band should remain available for automotive radars in perpetuity, as it is now.

So there were no threats to the Amateur allocation from that presentation. There were other, more recent ex parte filings, one from a company called Trex which has a chip for millimeter-wave radar applications at 77-81 GHz and wants it available ubiquitously, and one from Uber Technologies that says they support the automotive radar allocation plan. They don't say much else.

It is unclear when OET is going to get to this, but it is getting a bit old now so we do expect some action soon. There is nothing on circulation among the Commissioners as of this writing.

FCC has in this proceeding proposed to create a new Part 95, license-by-rule service for automotive radars operating at 76-81 GHz. The NPRM was issued February 5, 2015. It was based on RM-11666, a petition filed by my office on behalf of Robert Bosch, GmbH. FCC established a comment date of April 6, 2015 and a reply comment date of April 20. Though there has been at all times a complete identity of interest between ARRL and Robert Bosch in this proceeding, the docket turned into a potential problem for the Amateur Service relative to our primary allocation at 77.5-78 GHz and our secondary allocations at 76-77.5 and 78-81 GHz. The FCC NPRM did *not* track the Bosch Petition well at all, and as it was released it is a problem for both Bosch and for ARRL. The Bosch comments I filed in response to the NPRM were completely supportive of retaining the entirety of the allocation status that Amateurs have now domestically, and they strongly opposed the authorization of fixed radars in the band 76-81 GHz.

FCC proposes in the NPRM to adopt rules that will accommodate the commercial development and use of various radar technologies (fixed and mobile) in the 76-81 GHz band *under Part 95 of the Rules* instead of Part 15 as Bosch had proposed. The NPRM includes allocation changes to the band as well as sharing provisions. Specifically, the NPRM asks for comment on the proposals to: (1) Expand radar operations in the 76-81 GHz band to include various fixed and mobile uses; (2) To modify the Table of Frequency Allocations to provide an allocation for the radiolocation service in the 77.5-78 GHz band; (3) Authorize the expanded radar operations on a licensed basis under Part 95; (4) Shift vehicular and other users away from the existing Part 15 unlicensed operating model; and (5) Evaluate the compatibility of incumbent operations, including Amateur Radio, with radar applications in the 77-81 GHz band.

Bosch asked that all Amateur Radio allocations be kept intact and in fact asked FCC to consider *adding* an Amateur allocation at 75.5-76 GHz to compensate for any potential reduction in utility to the Amateur Service of the band 77-81 GHz if automotive radars were allowed into that band under Part 15 (not Part 95). Allowing fixed radars in the band 76-81 GHz, especially on a licensed basis is a huge problem for automotive radar manufacturers as the only studies to date from Europe indicate that there is *not* compatibility between fixed and automotive radars. Nor is there compatibility between fixed radars and Amateur Radio. There is, however, according to an ITU study (ITU-R Report M.2322), compatibility between automotive radar and Amateur Radio.

ARRL comments and reply comments, and the Bosch comments and reply comments as filed were consistent with the defense of Amateur Radio in this band. Part 95 status does nothing for automotive radar manufacturers which have been using the 76-77 GHz band for many years pursuant to Part 15 in the United States without any difficulty at all. Bosch distanced itself from some individual automobile manufacturers who filed joint comments suggesting relocation of the Amateur allocation, and argued aggressively against that proposal. We are waiting for an FCC Report and Order which is not imminent.

8. ET Docket 14-99, Model City for Demonstrating and Evaluating Advanced Sharing Technologies.

No action in this docket has occurred since the last Board meeting. ARRL filed comments in this proceeding on August 29, 2014. In this docket, FCC and NTIA jointly proposed 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. 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 due to the pervasiveness of shared Amateur Radio allocations above 450 MHz and because of the ubiquity of Amateur Radio operation. 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.

9. ET Docket 13-101; Receiver Performance Standards; Technological Advisory Council (TAC) White Paper.

There has been no action taken in this proceeding since ARRL comments were filed in July of 2013 on a TAC proposal to establish receiver performance (i.e. interference rejection) standards in order to permit greater sharing of spectrum.

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

While there is still no regulatory news about our long-pending reconsideration petition that we have on file and which is now before the Public Safety and Homeland Security Bureau, I am going to cease tracking this proceeding because Reconrobotics is bankrupt and effectively defunct. Creditors of the company forced it into bankruptcy in 2014, and while the petition was withdrawn in order to allow the company to reorganize, they apparently failed to do that.

11. MITRE Corporation Experimental License WH2XCI, File No. 1062-EX-PL-2014, granted October 1, 2014.

There is no update on this since the January Board meeting but apparently neither has there been any ***reported*** interference to Amateur Radio communications.

On October 1, 2014, MITRE Corporation (a government contractor and research firm) was granted an experimental license for a two-year period to operate a total of 21 transmitters at each of ten discrete, fixed locations in New York State and Massachusetts for the purpose of testing high frequency (HF) communications in a variety of frequency bands from 2.5 MHz to 16 MHz. The call sign is WH2XCI. It authorizes MITRE's operation in, among others, the bands 2505-4100 kHz, 5005- 6210 kHz, 6320-8250 kHz, 10.005-12.200 MHz and 13.500-14.990 MHz. These bands of course include the Amateur allocation at 3500-4000 kHz; the 2.8 kilohertz bandwidth channels allocated to the Amateur Service centered at 5332 kHz, 5348 kHz, 5358.5

kHz, 5373 kHz and 5405 kHz; and the Amateur allocations at 7.0-7.3 MHz, 10.100-10.150 MHz and 14.0-14.350 MHz. We negotiated with MITRE to inform us of times and days of experimental operation at each of the authorized sites, but they effectively refused. They also refused to avoid use of Amateur spectrum.

The emissions authorized by WH2XCI are maximum bandwidths of 5 kHz, 500 kHz and 1 MHz. The authorized effective radiated power levels range among 6 Watts, 24 Watts or 122 Watts. The purpose of MITRE's experimental operation is to test the "capability of higher bandwidth and higher data rate communications in the HF bands applying polarization diversity MIMO (multiple input, multiple output) concepts" for beyond line-of-sight propagation including ionospheric propagation. This is for "critical communications," apparently. It sounds a lot like an experiment being conducted for a government agency.

We argued that regardless of bandwidth, there is no chance of avoiding interference to ongoing HF Amateur Radio operation, and that when the interference from MITRE's wide bandwidth transmitters inevitably occurs in the narrow bandwidth, sensitive receivers used by Amateur Radio operators, *there is no way that the victim Amateurs will able to determine the source of the interference or know to whom they might complain about it*.

Beyond that I am unaware of any actual interference complaints that would permit us to ask FCC to shut down the experimental operation.

12. RM-11715; Mimosa Networks, Inc. Petition for Rule Making, proposing a Part 90 Fixed and Mobile allocation in the 10.000-10.500 GHz band.

There has been no action taken by FCC in this proceeding since ARRL comments on the Petition for Rule Making were filed at FCC April 11, 2014.

ARRL opposed the effort of Mimosa Networks of Los Gatos, CA to reallocate the 10-10.5 GHz band for fixed broadband. Mimosa, a wireless broadband products manufacturer filed a Petition for Rule Making May 1, 2013 seeking 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. Our comments attempted to protect the Amateur secondary allocation at 10.0-10.5 GHz and the Amateur Satellite Service 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.

Our argument is that the FCC is without the jurisdiction to make this allocation, at least without some buy-in from NTIA. So we have kept in touch with NTIA to make sure that they continue to protect military airborne radars at 10 GHz and retain the footnote US128 to the Table of Allocations that precludes any new allocations (other than the Earth Exploration Satellite Service that is proposed to be added to this band at WRC-15 and which is compatible with Amateur Radio to an acceptable extent). So far, so good.

13. Petition for Rule Making to implement 5 MHz allocation from WRC-15.

The Executive Committee in March ordered, at the recommendation of Brennan Price, that a Petition for Rule Making be filed to implement the 5 MHz allocation that was obtained at WRC-15. Brennan had submitted a written report to the EC on a variety of topics and among them was this recommendation:

> The FCC is likely to address implementation of the WRC-15 results with its typical sloth (it still hasn't fully implemented the results of WRC-07, let alone WRC-12). That said, a window support to maintain the status quo on at least some of our channels may be closing at the end of the Obama administration. The status quo permits amateurs 100 W output into a dipole for phone. Presuming the admitted fictions of a dipole and an isotropic radiator in free space, this would be reduced to 9 W output into the same antenna if the current arrangement were to be replaced by the result of WRC-15.
>
> During final preparations for WRC-15, and entirely too late to be of help at WRC-15, Ted Okada of FEMA approached both Mike Corey and myself to ask how they could be of help in the 5 MHz effort. Ted quickly understood that the international effort was too far gone, but offered that Craig Fugate would be interested in supporting continued Amateur Radio access to channels under currently authorized conditions, perhaps designating certain channels for certain geographic regions (a la Alaska). Ted stressed that Fugate would like to help Amateur Radio while he can, but that his presence at FEMA is not likely to outlast the Obama administration. With this in mind, we might consider whether we should petition for rulemaking to implement the 5 MHz outcome at WRC-15 as a supplement, and not a replacement, sooner rather than later. It will likely not hasten FCC action, but may provide an opportunity for FEMA to endorse the concept while it is still inclined to do so. Some help in order to counter the argument that the output of WRC-15 must be given primacy would be welcome, and we may have a limited opportunity to get that help from FEMA on the record.

Brennan offered to prepare a draft of the substance of the Petition. I hope to receive that shortly and to prepare for the Board's review a complete petition for review and subsequent filing with FCC. This is highly problematic for a number of reasons. First, there is no FCC proceeding to implement the final acts of WRC-15. The filing of a petition now is not likely to trigger anything but a yawn from FCC. However, it at least gives us a place in the queue. Second, the power limitation decided on for ITU Region 2 for this 15 kHz allocation is exceptionally low, and our argument is to have a 100 watt power limit for the United States. The 100 watt limit is critical for

us because the purpose of the 60-meter channels in the first place was to be able to facilitate a propagation gap between 80 and 40 meters for the purpose of disaster relief communications between the continental U.S. and the Caribbean basin. The band will be in use during the Hurricane season when static crashes and high noise levels prevail on those paths. The power level is critical in the domestic implementation of the allocation.

This will require some serious justification since the United States was not a supporter of an allocation for the Amateur Service at 60 meters anyway. Third, we also want to keep the channels we have at 60 meters at the power level that we have. Fourth, so far, we don't have the report of the Cascadia Rising exercise in hand, at which the 60-meter channels were used. That would be helpful to us in justifying the higher power level.

This petition is going to be a challenge; it is very important to get it right when it is filed; and it is not something to rush thorough. I don't have Brennan's draft yet and as such it may well be that there will not be sufficient time to get a good solid petition drafted for your review at this upcoming meeting despite our best intentions otherwise. If there is not time, I will circulate a draft to the Executive Committee at the earliest possible opportunity, and to any Board member who has an interest in reviewing it. This is probably the most important FCC filing that we will do this year.

C. Non-Allocation FCC Regulatory Issues

1. RM-11759; ARRL Petition for Rule Making to effect changes in the 80 and 75-meter RTTY/data and phone/image subbands; to restore 80-meter frequency privileges for certain license classes; to shift the 80-meter automatically controlled digital station band segment; and to authorize Novice and Technician class licensees to utilize RTTY/data emissions in certain bands. (

This Petition for Rulemaking was called for by Minute 32 of the July, 2015 Board Meeting. It was filed January 8, 2016 and placed on Public Notice February 22, 2016. Comments were due March 23, 2016, and reply comments were due April 7, 2016.

We filed comments on our own petition in this proceeding on March 23. *There are as of now 264 comments filed in this proceeding, most of which oppose the relief requested*. A few CW operators and others support the proposal, most without stating firm reasons for their support. However, a majority of comments are from Extra Class licensees who object to having their exclusive segment reduced. These are one-sentence comments in large part but there is enough volume here that we felt that a restatement of the justification for the petition, and for the proposed reduction in the exclusive Amateur extra class subband at 75 meters should be provided by ARRL, hence the comments filed on our own petition.

The Petition includes the following points, per the Board's instruction:

(A) To modify the 80-meter RTTY/Data subband defined in Rule Sections 97.301 and 97.305 so that it extends from 3500 kHz to 3650 kHz;

(B) To modify the 75-meter Phone/Image subband defined in Rule Sections 97.301 and 97.305 so that it extends from 3650 kHz to 4000 kHz;

(C) To provide that the 3600-3650 kHz segment of the 80-meter band will be made available for General and Advanced Class licensees, as was the case prior to 2006;

(D) To provide that the band segment 3600-3650 kHz will also be available to Novice and Technician Class licensees for telegraphy (consistent with the existing rules that now permit Novice and Technician Class licensees to use telegraphy in the General and Advanced Class RTTY/data subbands at 80, 40, and 15 Meters);

(E) To modify Section 97.221(b) of the Commission's Rules governing automatically controlled digital stations, so that the segment of the 80-meter band that is available for automatically controlled digital operation shifts from 3585-3600 kHz (as per the existing rules) to 3600-3615 kHz (consistent with the IARU Region 1 and Region 2 band plans); and

(F) To provide RTTY/data privileges to Novice and Technician licensees in their 15-meter band segment and their 80-meter band segment, the latter contingent on the rule changes at (A) and (B) hereinabove.

In the petition, with respect to the effect of the "rebanding" on Extra Class 75-meter phone operators, we stated as follows:

> While ARRL received overwhelming support for the proposed 50 kilohertz expansion of the 80-meter band, concern was expressed by a few Extra Class licensees about the proposal, inasmuch as those licensees enjoy the inordinately large, exclusive 3600-3700 kHz segment for phone/image operation. Extra Class licensees, however, should be reminded that the 3700-3800 kHz segment of the 75-meter band is and would continue under ARRL's proposal to be available only to Extra and Advanced Class licensees. Only 7 percent of the Commission's licensees hold Advanced Class licenses, and that number will continue to decline toward zero as this license class is no longer being issued. Even if the phone/image subband at 75 meters is reduced in size from 400 kilohertz to 350 kilohertz as herein proposed, it will still be the largest phone/image subband among all of the HF Amateur allocations.

While this seems a reasonable justification for the proposed rearrangement of the 75/80 meter band, the vocal minority of Extra Class licensees that the ARRL HF Band Plan Committee heard from when the surveys were conducted are repeating their concerns to the FCC now.

FCC is rather closed-mouthed about their intentions for this Petition, but they did say that this Petition would be consolidated with RM-11767 and would be handled as one item.

2. RM-11767, Expert Linears America, LLC Petition for Rule Making to Eliminate the 15 dB gain rule for Amateur Linear Amplifiers.

We filed comments May 26, 2016 in strong support of a Petition for Rulemaking filed on April 7, 2016 by Expert Linears America, LLC. The Petition proposes that the Commission amend Section 97. 317(a)(2) of the Amateur Service rules in order to eliminate the requirement that, for a manufacturer of external RF power amplifiers to receive a grant of certification therefor, the amplifier must not be capable of amplifying the input RF power (driving signal) by more than 15 dB of gain.

This petition continues the effort that Bill Cross initiated in 2006 in Docket 04-140 which eliminated the 50-watt minimum drive power requirement for amplifiers and modified the ban on amplifiers that exhibited amplification between 24 and 35 MHz. the rule now requires zero amplification between 26 and 28 MHz. But in 2006 FCC left in the 15 dB limit on amplification. Now, that rule makes it impossible for, for example, SDR low power output transmitters to be amplified to full legal power without an intermediate amplification stage added. The 15 dB rule is a relic from the CB days that was never necessary. There is a Part 95 rule that prohibits using in the CB service an amplifier capable of more than 15 dB of gain. If the Part 97 rule is eliminated, there will still remain a certification rule for Amateur amplifiers that prohibits certification if the amplifier has more than 0 dB of gain between 26 and 28 MHz. That alone is sufficient to preclude CB or freeband use of Amateur amplifiers. All Amateur amplifiers must be certified.

So, this is the last vestige of the FCC's ill-conceived linear amplifier ban. The FCC overregulated Amateur amplifiers terribly in 1978 and only now is the last major piece of that being addressed. The Expert Linear petition was prepared by our good friend Jim Talens, N3JT, a PVRC guy, excellent CW operator, and former FCC staffer.

We have for some time heard the concerns of several linear amplifier manufacturers about the effect of Section 97.317(a)(2) of the FCC rules on their ability to market their products. The EC discussed the rule at a recent meeting in Dallas but decided not to take the initiative on ARRL's part to eliminate this rule. It was reasonable to expect that manufacturers, who have never carried their own oars very well on linear amp rules, should be the ones to pursue this on their own. Now, one manufacturer has done so.

N3JT originally, after conferring with me about this, filed a waiver request but FCC said they wouldn't grant it because Expert is not the only amp manufacturer affected. FCC said that Jim had to file a rulemaking Petition, which he did on April 5. There is a good deal of support for this Petition in the amateur community. FCC apparently intends to combine this with our RM-11759 but no work has begun on an omnibus Part 97 rulemaking in the Wireless Bureau yet.

3. RM-11769, Petition for Rule Making filed on or about November 12, 2015 by James Edwin Whedbee to modify Part 97 of the Commission's Rules and Regulations to redesignate subbands from exclusively Morse code to narrowband modes, including CW and for other purposes.

FCC placed on public notice on May 11, 2016 a May 2, 2016 Petition for Rulemaking filed by Edwin Whedbee, a perennial filer of petitions and comments that are often very much off-the-wall. This one is no exception. RM-11769 ostensibly urges that the CW subbands in bands below 220 MHz, which he believes now permit only CW emissions (150HA1A) be modified to permit data communications as well. The problem is that Whedbee's premise, that the CW segments in the HF bands do not permit data, is simply wrong. The RTTY/data subbands are delineated in Section 97.305(c) and data can be transmitted in the RTTY/data subbands. The other problems with the Whedbee petition are that (1) he includes no appendix with the rule changes he wants to implement, and (2) he offers no justification for the rule changes he proposes except to note that CW is not deserving of special subbands only for that emission (which is fine since there are none).

There are other proposals in the petition which generally urge that bandwidth limitations rather than emission types should be defined in the rules. For example, in the voice and image segments below 1.8 MHz, the 20 dB bandwidths should be limited to 1300 Hz; between 1.8 and 29.5 MHz, the 20 dB bandwidths should be limited to 8000 Hz; and between 29.5 and 220 MHz the limit should be 20 kHz, etc. No justification is offered for these numbers. He proposes to leave 60 meters alone.

There are as of this writing 411 comments, mostly against the petition, and most failing to grasp the fact that the petition is based on a misconception about what the current rules provide. So they defend CW and urge that the "exclusive CW subbands" be left alone. Comments on this Petition were due June 10. The Executive Committee decided to not file any comments on this Petition as it is fatally flawed.

4. RM-_____; Petition for Rule Making filed on or about November 12, 2015 by James Edwin Whedbee to authorize special, limited, low-power and time-limited experimental operation by all Amateur licensees on all Amateur Service frequencies.

James Whedbee's Petition argues that all amateur radio licensees should be able to conduct experimental communications using very low power and limited times. These experiments would, in LF Amateur bands, be limited to 1 mW ERP and 150 Hz maximum bandwidth. At MF, this would increase to 10 mW, and the maximum bandwidth would remain the same. At HF, 25 mW at 3 kHz; at VHF, 100 mW, 20 kHz; and at UHF, 100 mW at 6 MHz. At SHF, 100 mW at 20 MHz.

Whedbee also called for waivers to permit hams to begin experimenting on allocations granted at a WRC but which have not yet been allocated directly. He says that logging of experiments conducted pursuant to this new rule would be required to demonstrate times and dates of operations. Finally, the experimentation would not include specification of emission

types, but it would instead require that the experiment stay within the maximum bandwidth permitted by the rules.

This Petition was dismissed by FCC without affording it an RM number because it did not show how recently amended rule changes governing the experimental radio service under Part 5 of the Rules was in any way inadequate to address the concerns Whedbee raised.

5. RM-11760; Petition for Rule Making of Mark F. Krotz, N7MK to amend Section 97.25 of the FCC rules to permit lifetime operator licenses and to obviate license renewal applications in order to reduce administrative costs.

This Petition was placed on Public Notice by FCC on February 23, 2016. Comments were due March 24, 2016 and reply comments were due April 8, 2016. It was dismissed by Order dated June 22, 2016.

This was a bare petition filed by an individual and not pertaining to spectrum. As such, we normally would not comment on the petition. However, it proposed a lifetime Amateur Radio operator license and proposes further to eliminate license renewals. The Commission lacks the statutory authority to obviate station license renewals, and station licenses are renewed along with operator's licenses. Furthermore, this issue was addressed recently by the Commission.

Mark F. Krotz, N7MK proposed that Section 97.25 of its rules be amended to indicate that Amateur Radio licenses are granted for the holder's lifetime, instead of for the current 10 year term. In 2014, in an "omnibus" rulemaking proceeding in Docket 12-283, the Commission granted lifetime exam credit for examination elements 3 and 4, but applicants seeking relicensing under that provision still must pass examination element 2. So it is arguable that this Petition is repetitive and deals with material recently acted on by the Commission and should be dismissed. As noted, license renewals are inevitable due to the combined station/operator license. Finally, there are practical problems with a lifetime, non-renewed license. The procedure for dealing with chronic rule violators is not to suspend or revoke a license but to have the licensee's license renewal application designated for hearing to determine whether the public interest would be served by renewing the license. Absent a renewal process, it is doubtful that FCC would be at this point willing to subject licensees to revocation proceedings rather than renewal denials, though the procedure is the same: a hearing is required for either one.

The history of this issue is as follows: In 1995, FCC proposed to generally allow examination element credit for expired amateur operator licenses. The comments mostly opposed the proposal and in 1997 FCC declined to amend the rules, concluding that requiring licensees either to renew their licenses or retest before they may reenter the amateur service does not impose a hardship. FCC noted that its procedures provide ample notification and opportunity for license renewal, and VECs provide numerous examination options. In 2011, the Anchorage VEC asked FCC to amend the rules to grant examination credit for expired amateur operator licenses, instead of requiring former licensees to retest. In response, FCC adopted an NPRM in Docket 12-283, in which it indicated its tentative belief that requiring licensees either to renew their licenses or retest in order to reenter the amateur service does not impose an unreasonable burden. Nonetheless, FCC tentatively agreed with Anchorage VEC that it is not necessary to require

former licensees to retest because the fact that an individual allowed his or her license to expire more than two years earlier does not necessarily mean that the person no longer possesses adequate knowledge of the subject. Accordingly, FCC proposed to amend the rules to require that VEs give examination element credit to an applicant who formerly held a class of license that required passage of that element. It ultimately decided to use a "King Solomon" approach however, and to grant credit for written examination Elements 3 and 4 for expired licenses that required passage so as to provide some relief for former General, Advanced, and Amateur Extra Class licensees (and consistent with treatment of expired pre-1987 Technician Class licensees who want to reenter the Amateur service). However, all licensees with expired licenses must pass Element 2 in order to be relicensed. FCC said that a former licensee who cannot pass Element 2 loses the presumption that he or she has retained sufficient knowledge of amateur radio rules and principles, and will not be relicensed. Requiring former licensees to pass Element 2 will also deter fraud.

We filed no comments on the Petition and FCC's Order dismissing it said that it did not disclose sufficient grounds for the requested rule change.

6. 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.

There is now on circulation a proposed Notice of Proposed Rule Making among the Commissioners in this proceeding. This has been on circulation since April 8 and Scot Stone indicates that it is not likely to move very soon.

More than two and a half years ago, on November 14, 2013, ARRL filed a Petition for Rule Making which proposed to modify the Commission's Amateur Radio Service rules (Part 97), so as to eliminate the symbol rate limit in those rules relative to data emissions in the Amateur allocations below 29.7 MHz; and to establish a 2.8 kilohertz maximum occupied bandwidth for data emissions in those bands. The Petition was placed on Public Notice November 21, 2013.

Seldom in my 37 years of practice before FCC have I seen a *two-year delay* in adjudicating a bare petition for rulemaking. This is exceptionally poor responsiveness, even for the Wireless Bureau.

7. RF Lighting Device Complaints to FCC (Initiative to generate FCC enforcement of overpower RF lighting ballast devices; filed and planned future complaints aimed at ballast importers and retailers and large consumer retailers of RF lighting devices intended for industrial applications only).

FCC has still taken no action that we know of in response to a complaint filed with FCC on March 12, 2014 regarding a Lumatek RF Lighting Ballast that failed the FCC's conducted emission limit by a large amount. In mid-June, 2015 we filed three additional complaints about a second Lumatek Ballast and two other devices. One was manufactured by Quantum Horticulture and the other by Galaxy Legacy. In every case, as tested by ARRL's Laboratory, these devices

(which the ARRL Laboratory purchased at retail) fail the FCC Part 15 conducted emission limitations. There are several associated marketing rule violations with each device. We also filed on July 14, 2015 a complaint about marketing practices of Home Depot relative to their marketing of RF lighting products intended to be used only in industrial applications, but which are being marketed to consumers for residential use with the full advice and consent of Home Depot. Most recently, we prepared and filed similar complaints about Lowe's and WalMart, in a comprehensive effort to keep the pressure on FCC to take some action with respect to these devices.

We have developed with the Society of Broadcast Engineers and the substantially disenfranchised AM broadcast community, an ally in the effort against RF noise. However, the focus of AM revitalization is not on ambient RF conditions because fixing that is a long-term effort and AM broadcasters have very short term economic concerns. The FCC's order and further NPRM concerning AM revitalization, released in November was a huge disappointment in that it made no reference to the need to regulate ambient noise in the MF and HF bands, nor did it address Part 15 and Part 18 device marketing. The SBE had argued that such is a major obstacle to revitalization of AM broadcasting. The broadcast engineers will continue to advocate for regulation and study of ambient noise levels.

Ed Hare and Mike Gruber and Kermit Carlson continue to do yeoman service on their EMI efforts.

8. WT Dockets 03-187 and 08-61; Effects of Communications Towers on Migratory Birds.

There has been no FCC action in this proceeding or on this topic since a March, 2012 FCC report.

9. ET Docket 13-84; Reexamination of RF exposure regulations.

There has been no action since the last Board meeting on this 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, and to use the exemption criteria as the preemptive standard as against more stringent state or local criteria since the last Board meeting. ARRL comments were filed September 3, 2013 and an oral Ex Parte presentation to the FCC's Wireless Telecommunications Bureau made by Dave Sumner and me on May 13, 2014. This remains a very dangerous proceeding, however and we continue to be vigilant with respect to it.

In the past, FCC has categorically exempted Amateur stations from routine RF exposure evaluation. In this proceeding, however, there is an intention to avoid specific exemptions for particular services, so as to ensure a consistent set of rules without exceptions. So, FCC has proposed to delete the categorical exemption from RF evaluation in the Amateur Radio Service in Section 97.13(c) of the Amateur Service rules. FCC says that Amateur Radio operators "are knowledgeable about the appropriate use of their equipment, such that separation distances are likely to be maintained to ensure compliance with our exposure limits…" but because the existing amateur exemptions "are based only on transmitter power and do not consider

separation distance or antenna gain, exempt transmitting antennas that are unusually close to people could potentially lead to non-compliant exposure levels." Our comments stated that the proposal to eliminate the "special exemption" (as the Notice put it) from routine RF exposure evaluation for the Amateur Service now set forth in Section 97.13(c) of the Commission's rules would *substantially* complicate the process of RF exposure evaluation requirements for Amateur Radio licensees.

The problem is the very significant increase in the number of Amateur stations that would be subject to routine environmental processing due to the wide variety (and size) of residential station installations; HF mobile stations; and the effect of these new rules on the ability of radio Amateurs to obtain and maintain land use authorizations for their stations. The FCC's goal of uniformity in RF exposure evaluation thresholds creates uneven regulatory burdens which disproportionately prejudice Amateur Radio licensees due to the unique considerations applicable to residential and mobile antenna installations utilized by radio Amateurs.

The general exemption table for single RF sources would require, *regardless of ERP*, a routine evaluation "if the separation distance R is less than $\lambda/2\pi$ from the radiating structure, where λ is the free-space operating wavelength, unless the available maximum time-averaged power is less than one milliwatt." This would subject virtually all mobile and portable Amateur Radio operations to routine environmental analyses, without a factual predicate for the additional regulatory burden, and without taking into account a number of factors, including the shielding effect of car bodies, etc. Furthermore, the separation distances using the radian sphere $\lambda/2\pi$ would require a great many radio Amateurs who live on smaller real estate lots, and those who must reside in multiple unit dwellings to do an environmental analysis in order to operate in the 160, 80 and 40-meter Amateur bands *regardless of the power level used*. As to the formula for calculating ERP at the radian sphere $\lambda/2\pi$ distance for those three bands in particular, the ERP is higher than that which is achievable with a standard half-wave dipole at full legal power for the Amateur Service. Many, probably most, radio Amateurs utilize simple antennas for those frequency bands (i.e. some sort of dipole or random wire antenna). It is arguable therefore that for operation on Amateur frequencies below 14 MHz, the $\lambda/2\pi$ separation distance threshold, if adopted as proposed, should be waived for radio Amateurs.

10. WT Docket No. 15-81, Amendment of FCC Rules Concerning Electronically Stored Application and Licensing Data.

No action has been taken in this proceeding since the last Board meeting in January.

ARRL comments were filed June 16, 2015 in response to an FCC proposal to delete historical licensee address data in ULS for privacy reasons. Specifically, FCC proposed to amend the Commission's rules to specify that historical amateur radio licensee address information will not be routinely available for public inspection and to remove from public view in the ULS amateur radio licensee address information that is not associated with a current license or pending application. FCC also asked about removing address information from current licenses in the ULS as well, but didn't propose that.

In October, I received a call from Scot Stone at FCC "inviting" ARRL to submit some additional comment in this Docket. Scot asked for additional information about our statement in our comments that:

> "A very important use of historical licensee data not associated with a current license is by the Volunteer Examiner Coordinators (VECs) in researching the entitlement of a candidate for an upgraded Amateur Radio operator license to examination credit for a license previously held by that candidate. The Commission decided one year ago in docket 12-283 to afford examination credit to certain former licensees for examination elements 3 and 4. See, 47 C.F.R. §97.505(a). This placed an additional burden on the VECs and the Volunteer Examiner (VE) teams that volunteer their services in examination administration. ARRL noted that in order to provide examination credit to license candidates for licenses previously held (which may have expired many years previously), the VEs or VECs would be called upon to authenticate old documents and to generally validate the entitlement to the alleged former licensee to the claimed examination element credit. Authentication of documents and the research necessary to such validation did not fall within the skill sets of administering VEs or VECs. However, the rules are now in place and it is, for better or worse, the VEC's obligation to make sure that examination credit is granted only where the applicant is entitled to it. Using ULS historical licensing data is a principal means of verifying that an examination candidate who claims credit for examination elements 3 and 4 is actually the person who formerly held a license that would entitle him or her to the credit provided for by Section 505(a) of the Rules. Having placed a difficult authentication / verification burden on VECs and/or VEs a year ago, it is not now reasonable to deprive the VECs and VEs of the ability to ensure the integrity of the volunteer examination program by revoking access to information by which, at least in part, a VEC might verify an applicant's claim of entitlement to examination credit."

This must have struck a nerve with WTB because they asked for statistics on how many hams are looking for lifetime credit for licenses previously held and any other further explanation of the burden on VECs from deleting historical license data. We had suggested that an alternative might be to allow VECs access to that data but not the general public.

Thanks to some quick and efficient work by Maria Somma, we filed some good *ex parte* supplemental comments, in which we provided some statistics, including the following:

> The ARRL-VEC currently transmits to the Commission, on average, 5 applicants with expired license credits per week. Therefore, the ARRL-VEC has handled approximately 300 such applications since July of 2014. ARRL handles a large majority of the Amateur Radio examinations administered and applications for new and upgraded Amateur licenses, but the experience of the other VECs with respect to expired license credit applications is not specifically known. There is no good means of determining how many former licensees may take advantage of prior license examination credit in future years because there is no way to alert previous licensees of the still-new program. Applicants that have used the prior license credit mostly learned of the opportunity to regain an Amateur license by word-of-mouth from acquaintances or from relatives who are licensees. Others stumbled upon it having decided to get back into Amateur Radio. Though there is no way to predict future numbers, it may be expected that as more former licensees hear of the availability of lifetime examination credit, more will decide to regain their licenses. The Commission, having obligated VECs to validate claims of former licensee status and the data associated therewith, cannot fairly take away a key resource for objectively evaluating the validity of

> applicants' claims and documentation. To do so decreases substantially the ability of VECs to maintain the historically high degree of integrity of the Amateur Radio licensing process. Since the Commission clearly has no intention of assuming any of the burden of the validation process (and is ill-equipped to do so in any case), the instant proposal is, from the perspective of the ARRL-VEC, both unfair and illogical.

The docket is still open with no resolution date known so far.

11. General Docket 14-25; Public Comment on FCC Report on Process Reform

There has been no action in this proceeding since the January Board Meeting.

FCC released on February 14, 2014 a Report on FCC "Process Reform" and a public notice asking for comments on it on or before March 31, 2014 and we filed our comments by that date. We identified some very clear targets for our comments. Most of what we filed focused on the effect of the Commission's constrictive policies on enforcement in the Amateur Service, but we also dealt with Power Line Interference cases; Part 15 enforcement generally; timing of processing of petitions for rule making and open docket resolution; special accommodations from the Wireless Bureau when requested; and avoiding the appearance of impropriety, using the BPL Sunshine Act violation of Commissioner Michael Powell in 2004 as an example. Our comments were somewhat aggressive. However, there were very few comments filed in the proceeding (80 in total) and others were as candid with FCC as was ARRL. There is now and there has been pending in Congress legislation about FCC process reform.

II. Noteworthy Pending Antenna and RFI Cases.

1. Myles Landstein, N2EHG v. Town of LaGrangeville, NY. 2015 NY Slip Op 51260(U).

Nothing about this case has gone according to our hopes for it. Part of the problem has been Myles himself; he is detached from the process and has failed utterly and completely to keep us informed about the progress of his case. Another part of the problem is Myles' attorney, Jon Adams, who not only has been completely nonresponsive to our requests for updates, but he seems to have handled this case in a manner that draws into question the quality of his representation of Myles. It turns out that trial was held in the Supreme Court for Orange County, New York and a significantly adverse decision was rendered on August 21, 2015. The last we had heard of this case before that time was after the Complaint had been prepared by Landstein's attorney. It principally asserted that there is a cost prohibition imposed by the Town of LaGrangeville against Landstein's antenna, and the Town failed to consider an Amateur Radio antenna to be a normal accessory use to residential real property. The draft complaint that I was shown was a really bad example of draftsmanship, and I was left to question the competence of Landstein's attorney. I had to rewrite the whole thing essentially and offered a highly redlined version to Landstein's attorney, who claimed that he used all our edits. I never heard more of the case until we saw the judgment. The Supreme Court (the trial courts in New York are, oddly enough, called the "Supreme Court") decided the case completely adversely to Landstein. Here is the gist of the decision:

Upon the foregoing papers, the petition and motion are decided as follows:

"Undeniable tension exists between amateur radio operators' interests in erecting a radio antenna high enough to ensure successful communications, and local municipalities' interests in regulating the size and placement of amateur radio antennas" (Palmer v. City of Saratoga Springs, 180 F. Supp2d 379 [NDNY, 2001]).

By way of background, petitioner is the owner of single family residence located at 16 Velie Road, LaGrange, New York. Petitioner is an FCC-licensee in the Amateur Radio Service. On or about March of 2011, petitioner verbally applied to the zoning administrator of the Town of LaGrange for a land use permit to construct a One Hundred (100) foot lattice antenna support structure to support various antennas necessary to facilitate transmission and reception of amateur radio signals. Petitioner alleges that the approximate cost of this structure would be less than One Thousand Dollars ($1,000.00). On March 11, 2011, petitioner submitted a written application to the planning board for site plan approval and a special use permit for the location of a 100 foot support structure for antenna. On the application, petitioner requested that no expenses be incurred by the Planning Board without prior notice and consent. During the course of [*3]that proceeding, an issue arose as to whether the height requested was permitted, and the Planning Board asked petitioner to obtain an interpretation by the town's zoning administrator, who found such use to require an area variance. On February 7, 2012, petitioner applied to the zoning board of appeals for an area variance for height. On April 1, 2012, the town demanded an escrow fee of Seven Thousand Dollars ($7,000.00). On April 2, 2012, the zoning administrator determined that an amateur radio antenna was not a customary use for a residential dwelling and that a variance would have to be obtained. On August 12, 2012, petitioner, through counsel, advised the town, in writing, that the request for escrow was unreasonable. Petitioner alleges, that notwithstanding the request of the petitioner, the town board permitted its counsel "to engage in unfettered billing for this application, with invoices totaling $18,735.11 being submitted from April, 2012 through April, 2014." Petitioner subsequently appeared before the town's zoning board of appeals, expressing his opinion that the demand for escrow was excessive; amounting to a prohibition not a reasonable accommodation. Petitioner alleges that the zoning board continued to process his appeal notwithstanding the failure to submit the escrow demanded. After meeting with his neighbors, petitioner agreed to reduce the height of the proposed antenna to seventy (70) feet in height. Subsequent to this, the zoning board raised the issue of the resolution of the outstanding balance of professional fees incurred by the town. Petitioner states that the zoning board of appeals ultimately suspended its hearings when a controversy arose over the payment by the petitioner of the fees alleged to be required by the town's code. On June 25, 2014, the town board and the petitioner reviewed the issue of payment of fees. On November 21, 2014, the town board adopted a resolution requiring that the petitioner pay into an escrow account the sum of Five Thousand Seven Hundred Eighty-Four Dollars ($5,784.00). Petitioner believes this amount to be a voluntary reduction by the town attorney of his fees. The town further required that the petitioner maintain a One Thousand Dollar ($1,000.00) balance in an escrow account at all times, presumably to pay incurred legal fees.

Petitioner maintains that a real and justifiable controversy exists because his land use application cannot be processed and approved with payment of fees which he deems to be excessive, a prohibition and a failure to provide reasonable accommodation.

The simple question posed to this Court is: Can the town require the petitioner herein to pay "reasonable and necessary" attorney's fees incurred in conjunction with his application?

Section 240-88 of the Town Of LaGrange Code states:

"A. Where the Town Board, Planning Board or the Zoning Board of Appeals uses the services of private engineers, attorneys or other consultants for purposes of engineering, scientific land use planning, environmental or legal reviews of the adequacy or substantive details of applications, or issues raised during the course of review of such applications, for special permit approvals under Articles VII and VIII of this chapter, site plan approvals under Article VII of this chapter, subdivision approvals under Chapter 203, Subdivision of Land, of the Town Code, use or area variances under Article IX of this chapter, applications for rezoning of parcels to accommodate site-specific land development proposals or otherwise, applications for permits to extract topsoil or natural resources under Articles III and VI of this chapter, or for any other or ancillary land use or development permits or approvals required under the Town Code, as well as to assist in assuring or enforcing an applicant's compliance with the terms and conditions of all the aforementioned administrative and legislative permits or approvals, the applicant and

landowner, if different, shall be jointly and severally responsible for payment of all the reasonable and necessary costs of such services. In no event shall that responsibility be greater than the actual cost to the Town of such engineering, legal or other consulting services.
B. The Town Board, Planning Board, or Zoning Board of Appeals, through or with the assistance of Town planning staff, may require advance periodic monetary deposits, to be held on account of the applicant or landowner by the Town of LaGrange to secure the reimbursement of the Town's consultant expenses. When an initial deposit is required upon the filing of the application, that deposit shall not exceed 50% of the average cost of such services for applications of similar type, size and complexity based upon the Town's experience over the preceding period of three years. The Town may make payments from the deposited funds for engineering, legal or consulting services, after audit and approval by the Town Board of itemized vouchers for such services. The Town shall supply copies of such vouchers to the applicant and/or landowner, appropriately redacted where necessary to shield legally privileged communications between Town officers or employees and the Town's consultants. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the Town to pay current or anticipated vouchers, the Town shall cause the applicant or landowner to [*4]deposit additional sums to meet such expenses or anticipated expenses.
C. The Town Board shall review and audit all vouchers and shall approve payment only of such engineering, legal and consulting expenses as are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of applications for land use or development approvals or for the monitoring, inspection or enforcement of permits or approvals or the conditions attached thereto. For the purpose of this review and audit, a fee shall be "reasonable in amount" if it bears a reasonable relationship to the average charge by engineers, attorneys or other consultants to the Town for services performed in connection with similar applications, and in this regard, the Town Board may take into consideration the complexity, both legal and physical, of the project proposed, including the size, type, and number of buildings to be constructed, the amount of time to complete the project, the topography of the land on which such project is located, soil conditions, surface water, drainage conditions, the nature and extent of highways, drainage facilities, utilities or parks to be constructed and special conditions or considerations as the Town Board may deem relevant. A fee or part thereof is "necessarily incurred" if it was charged by the engineer, attorney, or consultant for a service that was rendered in order to protect or promote the health, safety, or other vital interests of the residents of the Town; protect public or private property from damage from uncontrolled surface water runoff and other environmental factors; assure the proper and timely construction of highways, drainage facilities, utilities and parks; protect the legal interests of the Town, including receipt by the Town of good and proper title to dedicated highways and other facilities, the correction of defects arising during any postdedication maintenance period and the avoidance of claims and liability and such other interests as the Town Board may deem relevant."

The power of a town to charge "some amount" associated with the consideration of a land-use application is permissible (see Twin Lakes Dev. Corp. v. Town Of Monroe, 1 NY3d 98 [2003]). However, the fees charged must be reasonably necessary to the accomplishment of the towns regulatory and proprietary functions (see Suffolk County Bldrs. Assn. v. County of Suffolk, 46 NY2d 613 [1979]; Jewish Reconstructionist Synagogue of N. Shore v. Incorporated Vil. of Roslyn Harbor, 40 NY2d 158 [1976] reargument [*5]denied by 40 NY2d 846).

As stated above, on November 12, 2014, the town board completed its internal review and audit of the accrued legal expenses. Respondents allege that after "applying overarching federal principles of reasonable accommodation' of ham radio licensees, the Town Board offered an itemized and documented reduction of the Town's invoiced legal cost by over 300%, from $17,481 to $5,874 covering the billing period through May of 2014."

Although, Federal Law, specifically PRB-1 [FN1] , clearly requires a city or town to accommodate amateur radio communications, an amateur radio operator clearly has no right to build any antenna he or she chooses (see Palmer v. City of Saratoga Springs, 180 F. Supp2d 379 [NDNY, 2001]). PRB-1 has a reasonable accommodation standard which requires a municipality to: (1) consider the application; (32) make factual findings; and, (3) attempt to negotiate a satisfactory compromise with the applicant (id.). The Court finds there exists no full federal preemption of local zoning regulations applied to ham radio communications, including regulations pertaining to the defrayment of municipal review costs in the State of New York (cf. Palmer v. City of Saratoga Springs, 180 F. Supp2d 379 [NDNY, 2001]).

The petitioner's application which is pending before the zoning board of appeals has not yet been ruled on; rather, the process was placed on hold until the issue of the payment of legal fees was resolved. The record before the Court

pertaining solely to the issue of legal fees associated with the petitioner's application indicates that respondents attempted to reasonably accommodate the petitioner herein. The Court would note that over the nearly four year application process, as detailed above, petitioner was provided copies of invoices, numerous meetings were held, he was provided an opportunity to be heard concerning the invoices, the town board audited the invoices and ultimately reduced the legal fees sought by over two-thirds. Accordingly, this Court finds that the amount of Five Thousand Eight Hundred Seventy-Four Dollars ($5,874.00) covering the billing period through May of 2014 to be reasonable in nature (see generally Twin Lakes Dev. Corp. v. Town Of Monroe, 1 NY3d 98 [2003]).

Based upon the foregoing, the branch of the petition seeking [*6]to annul the determination of the town dated November 12, 2014 is denied. Petitioner is directed to submit payment in the amount of Five Thousand Eight Hundred Seventy-Four Dollars ($5,874.00), representing accrued billing up until May, 2014, to the respondent Town Of LaGrange within forty-five (45) days hereof. Petitioner is further directed to deposit the amount of One Thousand Dollars ($1,000.00) for future legal costs associated with this application. The petition is granted to the extent that, upon payment of arrears and the deposit of the escrow amount, the respondents are directed to proceed upon the petitioner's modified application concerning a Seventy (70) foot tower at his location. The branch of the petition seeking attorneys' fees is denied. The respondents' motion is denied as academic.

The foregoing constitutes the decision, order and judgment of the Court.
Dated:August 21, 2015

Landstein complained that this decision took him by surprise and he instructed Adams to note an appeal I received a draft brief that Adams prepared and commented on it. I am not aware of the status of the final brief. It may be that ARRL will file an amicus brief if the circumstances warrant it, and if it is timely to do so.

2. Jeffrey DePolo v. Board of Supervisors of Treddyfrin Township et al. (3rd Circuit United States Court of Appeals consideration of USDC dismissal of Amateur PRB-1 complaint for failure to state a claim upon which relief may be granted; Amicus Brief filed for ARRL August 17, 2015).

The oral argument in this case occured on Tuesday, January 12 of this year. Vice Director Famiglio has worked on this case in the 3rd Circuit United States Court of Appeals with co-counsel Fred Hopengarten, K1VR. ARRL's Amicus Curiae Brief was accepted by the Court over the objection of DePolo's opponents.

We have as yet no decision from the Court of Appeals with respect to the appeal by Jeff DePolo, WN3A from the decision of the United States District Court for the Eastern District of Pennsylvania. The District Court dismissed the case filed by DePolo challenging the 35-foot height limit of the township and the denial of DePolo's application for a 180-foot antenna system. The Court employed a Section 12(b)(6) preliminary motion to dismiss the case filed by the Township.

There were supplemental briefs filed on the effect of a Supreme Court case on whether or not the Court of Appeals had to find that the DePolo case had been adjudicated already or whether DePolo was non-suited due to a collateral estoppel argument. It is difficult to predict the outcome of this case which stands to potentially create a negative precedent for PRB-1 cases. The facts of this case present very little equity for the Amateur Radio argument. There was a mediation session scheduled by the Court of Appeals but it failed due to the reluctance of the Township to engage in any meaningful mediation. The Township indicated that it was not

convinced that it had any authority to participate in mediation relative to the administration of its ordinances.

III. Other Legal Matters.

There are no other legal matters that require discussion in this memorandum. There is the possibility of some pending litigation that may call for some discussion during the Board meeting in a Committee of the Whole at the pleasure of the Board. ***I would ask that no discussion of any pending litigation occur between or among Board members or vice directors, as that would potentially be discoverable and could damage ARRL.*** If there have been any such discussions or e-mail traffic, I would request that there be a full disclosure made and copies of any e-mail correspondence provided to my office without delay. Thank you.

I will be pleased to address any questions you may have about the substance of this report before or during the Board meeting. It remains my greatest professional privilege to serve the Board of Directors of ARRL.

Respectfully submitted,

Christopher D. Imlay

_____

Christopher D. Imlay
General Counsel