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REPORT OF THE GENERAL COUNSEL TO THE BOARD OF DIRECTORS

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

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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 this year 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.

I. FCC Matters

A. Overview of Legal and Regulatory Matters (some observations).

The same trend reported on in my last two Board memos continues unabated: the Commission's myopic focus on implementation of the National Broadband Plan to the virtual exclusion of all else has slowed the progress on rulemaking proceedings dealing with "old technology" services such as land mobile radio, Amateur Radio and broadcasting. Groups representing FCC licensees in virtually all services are saying the same thing. This myopia will not abate, regardless of the outcome of the elections in 2012. The NBP is a *fait accompli* at this point and some decisions have already been made and laid out for all to see in Section 5.5 of the NBP. The implementation of the NBP is a top priority, and the FCC Chairman just recently re-confirmed that in Congressional testimony on some anticipated FCC "process" legislation.

The Board was prudent in creating the Ad Hoc National Broadband Plan Committee. It was timely and important to do so and I am honored to have had the opportunity to participate in it thus far. IVP Bellows as Chairman, though always a gentleman, pursued an aggressive, almost relentless schedule of meetings of the Committee and I believe that the preliminary report that you will receive from Jay will reflect that effort by all of the Committee members. The preliminary report focuses on the analysis of the threats from the NBP to Amateur allocations between 222 and 3500 MHz. The second half of the Committee's year-long task -- to prepare strategies for the defense of those bands in that frequency range that are threatened (for reallocation or otherwise) – lies ahead. It is important to recognize that *these are not the only bands that are threatened potentially by the NBP*. They are, instead, only those bands that are in the frequency range of the 500 MHz of spectrum that must be found for broadband reallocation within the next ten years. Other bands outside that frequency range are threatened as well, but the Committee's charge is limited to a study of the bands in that frequency range.

The most difficult part of the Committee's work is ahead, of course; protecting what in some cases are large segments of spectrum that are virtually unused by radio amateurs (currently) is a difficult proposition in this environment. And when I say this, I am talking principally about 2390-2400 MHz. While not on the NTIA's initial list of candidate bands for reallocation (the most key chart that exists at the moment with respect to the NBP; as Jay will discuss with you at the meeting) 2390-2400 MHz is smack dab in the middle of the range of candidate bands and it is not shared with some urgent national defense Federal user. It is ten full megahertz wide and it has many, many

millions of dollars of value at a spectrum auction. It would be such a shame to lose that primary allocation, or to continue the apparently very low level of Amateur use of such a wonderful resource.

One indirect result of the work of the ARRL's NBP Committee was the realization that our band plans for the bands under study are so old and out of date as to be virtually useless. There is an urgent need to update them. Sometimes, the FCC cites ARRL national band plans in allocation proceedings, usually in a way as to marginalize the Amateur uses of a given band. We usually respond to this by saying that the band plans are not reflective of local uses and cannot be relied on for accuracy in assessing Amateur uses in any given location. We should not, however, allow nationwide band plans to be this far out of date without at least some review. They can be a useful tool, but they can be a weapon against us as well.

While it was highly fortuitous that FCC Chairman Genachowski became waylaid in Dayton while on his way elsewhere, and even more fortuitous that he was able to have President Craigie as his minder while he toured the Hara Arena, no one should believe that this Chairman will have any sympathy for our spectrum allocations when push comes to shove in connection with the NBP implementation. This Chairman has done a fine job of restoring morale at FCC, re-empowering certain bureaus, and cutting deep into the terrible backlog that FCC Chairman Martin left of rulemaking and other proceedings, but Genachowski is not going to defend Amateur Radio allocations, because he has a broadband agenda, purely and simply.

The Commission will, any day now, release the Report and Order presently on circulation in the Broadband over Power Line proceeding. The Executive Committee has overseen and administered a rather elaborate and consistent advocacy plan for this proceeding. Ed Hare and I believe that we have "covered the waterfront" in terms of our written submissions on the most critical elements of what we need in revised rules for BPL from FCC:

1) full-time, mandatory notching of Amateur allocations by BPL facilities, with notch depths of between 30 and 35 dB; and
2) a scientifically valid and supportable distance extrapolation factor for radiated BPL signal decay with increases in perpendicular separation from power lines.

Now, there is ***no*** mandatory notching of Amateur allocations, but only the ***ability*** to do so that is required, and the notch depths need be no deeper than 20 dB. The current extrapolation factor is 40 dB per decade of distance from the line. Our studies demonstrate that the number (outside the near field) is much closer to 20 dB per decade of distance.

Until recently, we were quite sure that the BPL advocates had largely gone home and left the battlefield. We were pretty sure that the Commission would have to give us revised rules that incorporated those two points above, which we had justified and supported repeatedly in our filings. Unexpectedly, however, and after a very long hiatus

from the docket proceeding, into the docket comes a two-page letter from UTC in May of 2011, responding to an ex parte written filing ARRL made back in *December of 2010*. They copied two lower-level staffers at FCC, Alan Stillwell and Anh Wride. UTC challenged our request for a full time, 35 dB notching requirement for Amateur allocations. They say that it would have a negative impact on BPL systems and it was unnecessary to protect Amateur Radio stations from interference.

While we have rebutted that filing with one of our own just recently (backed by Ed Hare's careful analysis and solid technical showings), UTC's letter was unusual in many respects. Why was UTC, which had been quiet in this proceeding for some time, so suddenly returning? Why submit a letter with no engineering support at all, arguing with no citation to authority that 35 dB notching was not necessary, in rebuttal to something that ARRL had filed *five months before*? Why copy only Stillwell and Wride? Something was very fishy. Then we discovered that the Commission had on circulation in early June a draft Report and Order in this proceeding. The timing of that relative to the timing of the UTC letter made a lot more sense now. And it didn't look good.

The piece of the puzzle that needs disclosure is that Alan Stillwell has been a serious antagonist to Amateur Radio (relative to BPL) and a defender of BPL since this proceeding commenced. What Ed Hare and I believe occurred (though of course we can't prove a thing) is that Alan looked at the record and realized that there was nothing in it that offset our proven need for full-time notching of Amateur allocations of 30-35 dB. In writing up an order on this, he had to balance the record somewhat, so UTC was contacted and solicited to file their two-page filing. *If anything like that occurred*, we may be looking at a less than satisfactory Report and Order on remand. If so, a Petition for Reconsideration would be easily supportable on the record we have. We will let you know as soon as we know anything. Perhaps Ed and I are just being paranoid. But it is hard to avoid speculation on suspicious circumstances when (1) there is so much at stake here; ARRL has invested so much in this effort and the integrity of the HF bands is very much at stake; (2) ARRL has exposed some very serious, intentional FCC missteps in this long process which look like a concerted effort to hide well-known problems with BPL; (3) the rules are necessary to protect Amateur Radio in advance, because as everyone knows, there is not any enforcement available after the fact to protect Amateur Radio from BPL interference; and (4) the first word in BPL is "broadband", and no matter how much of a misnomer that may be, it is a sacrosanct word at FCC and in the halls of Congress.

Speaking of Congress, President Craigie's report dwelt properly on H.R. 607. Her assessment is spot-on: we cannot afford to believe the soothing words of the staff of the House Homeland Security Committee when they tell us that we needn't worry about the reallocation of 420-440 MHz because that proposal was in the Bill only for "scoring" purposes. That is akin to asking us to buy a bridge in Brooklyn. We have to take major spectrum threats seriously in every case, and we have in connection with H.R. 607. We have discussed this in detail with the Chief Counsel for the House Subcommittee on Communications and Technology, and we have testified before that Subcommittee specifically on H.R. 607. We have devoted an enormous amount of resources to excising

Section 207(d) of that Bill, to the benefit of not only Amateurs but hundreds of thousands of Business and Industrial Radio licensees, public safety licensees, GMRS licensees, FRS radio users and broadcasters. We have seen very little evidence that anyone except ARRL is devoting substantial resources to defeating Section 207(d), though of course industry groups and manufacturers all are opposed to it.

Finally by way of general comments, I was privileged to be invited to attend the ARRL National Convention in Plano. Though it was of course entirely enjoyable, I will candidly note to you a concern that I have had that was exacerbated at the Convention. I have had for some time a nagging worry that Laura Smith, the FCC Enforcement Bureau attorney charged with Amateur Radio enforcement, is not sufficiently visible to continue the important deterrence that is a cornerstone of Riley Hollingsworth's success in building Amateur Radio enforcement to the point that it was before he retired. Riley didn't have to be everywhere at once (an obvious impossibility) because the Amateur community thought he was. He was on the air and would pop up periodically and unexpectedly. He was at many conventions and gave a lot of public talks. Potential rule violators were dissuaded from bad actions because they had a perception that they would be sanctioned for it. Riley may have cut a few corners in the process, raising some eyebrows among the lawyers looking over his shoulder, but he was darned effective.

Laura Smith is a different person with a different approach. She is not a licensed radio Amateur, and due to circumstances beyond her control, she does not have the ability to get out in the field as Riley did due to relatively new restrictions on accepting reimbursement for travel and limits on government budgeted travel. But honestly, I found her talk at Plano – the only Amateur Radio convention she is planning to attend this entire year – to be less than useful. She intended to convey the concept that "being a jerk on the air is not necessarily actionable and sometimes there is nothing that can be done about it, so twist the knob, etc. etc." Not a bad message but there was very, very little substance to it. I left feeling that the attendees (which were perhaps half those at Riley's talk at Plano) did not get much information from Laura. While in Plano, I renewed a long-time acquaintance with Ron Riviere, an active OO from New Orleans who I had worked with in the dark days before Riley in a terrible jamming case in New Orleans (fortunately, the jammer is now a silent key). I asked Ron to contrast the compliance "environment" when Riley was working versus the current situation since Laura commenced work. He said without knowing why I asked that the current situation is markedly deteriorated based on his anecdotal monitoring efforts. I asked him why he thought that was. He said that Riley's reputation for active enforcement was not being passed on to Laura Smith. This is only one person, but without intending to do so, Ron validated my independent suspicion, at least anecdotally.

President Craigie is planning an in-person meeting with Laura, and will see what can be done to make more visible the enforcement actions that are being done. Laura is apparently a good lawyer, and she is apparently working hard, but I have never been convinced that she appreciates the fact that deterrence in Amateur Radio enforcement is ***everything.*** Nor do I believe that the potential rule violators in the field are any longer of the view that the FCC might be listening to them.

B. Spectrum Allocation Issues

1. Broadband Over Power Line (BPL) regulations (ET Docket 04-37). Further Notice of Proposed Rule Making.

I sent to the Board in June a status memo on this proceeding, and it is discussed above briefly in the regulatory overview section of this Report. The following is taken from that memo, but it is updated.

The Executive Committee has closely overseen our advocacy efforts over the past year in this proceeding. We have been quite active, as my past two or three Board reports have indicated, in making *ex parte* filings, in order to insure that the record is as complete as possible with technical arguments in favor of our desired outcome. We had recently made what I thought at the time was the last of these filings, and Ed Hare and I were preparing a short in-person visit to OET to argue these points. However, OET, on June 10, 2011 finally sent a draft Further Report and Order to the Commissioners. It is now "on circulation" meaning that the Commissioners are considering the draft Order without an open Sunshine Act meeting, and once each of the five has approved some version of it, it will be released. It is possible that one or more of the Commissioners could ask OET to edit some part of it, and there may be some disagreements on the draft order, so the timing of release of it is very uncertain. There is at least one item on circulation at FCC that has been in that status for two years now. But the list of items on circulation is relatively short, and this Chairman has moved items fairly quickly (especially those pertaining to broadband), so we do anticipate an order to be released some time soon, perhaps prior to or shortly after the Board meeting.

Our "bottom line" requirement is new BPL rules that require full-time notching of Amateur allocations by BPL companies, to a notch depth of between 30 and 35 dB. If this is incorporated in the rules, we will be satisfied. We have made numerous filings justifying a distance extrapolation factor that reflects the signal decay of a radiated HF BPL signal with perpendicular distance from the power line, but frankly, if we get full time, 30 dB notching of Amateur bands, the distance extrapolation factor is not as important. We have told FCC that we insist on a scientifically valid extrapolation factor, however, and that outside the near field, that factor is much closer to 20 dB/decade of distance than to the 40 dB that is in the FCC rules now.

Keep in mind that this proceeding has languished at FCC. The Further Notice of Proposed Rule Making in this docket, post-remand, will be *two years old* as of July 17 of this year. The Court of Appeals remanded this case to the Commission in an opinion released April 25, 2008 and it released its Mandate on June 13, 2008, more than three years ago(!).

The filings we have made since the Further Notice has been released are as follows. Each has argued strenuously for (1) full-time, mandatory 35 dB notching of all Amateur bands; and (2) a scientifically valid signal decay extrapolation factor.

1. Comments on FNPRM, filed September 23, 2009.
2. Reply Comments on FNPRM, filed October 7, 2009.
3. Notice of Ex Parte Presentation (made by me to the Commission's Broadband Team and the Office of Engineering and Technology), November 3, 2009.
4. Notice of Ex Parte Presentation (made by Dave Sumner and me to the offices of four of the Commissioners on November 2, 2011) filed November 5, 2009.
5. Notice of Ex Parte Presentation (made by Dave Sumner and me to the office of the Chairman on November 24, 2011) filed December 3, 2009.
6. Written Ex Parte submission of 150 pages in rebuttal to a written ex parte presentation of Current Technologies, filed by ARRL on January 11, 2010 with numerous exhibits.
7. Written ex parte submission with numerous technical exhibits, demonstrating that 35 dB notch depth is in fact an industry standard that can be met without substantial adverse impact on BPL systems, filed November 30, 2010.
8. Interference complaint regarding IBEC BPL systems in Arrington and Fairfield, Virginia, Somerset, Pennsylvania and Martinsville, Indiana, filed with OET and EB on December 29, 2010.
9. Equipment Authorization Complaint with respect to IBEC BPL Regenerator Units and Customer Access Units, premised on poor correlation between FCC lab test submissions and deployed BPL systems, which are capable of much higher power than claimed by the manufacturer. Filed February 10, 2011.
10. Ex Parte Submission of 23 pages, including Hare rebuttal of NTIA Phase 2 BPL study, demonstrating that NTIA "cooked the books" in its BPL Phase 2 analysis in support of a 40 dB/decade distance extrapolation factor. Filed most recently June 17, 2011.

All of these filings have been sent to the Board, but to view them all in one place, please see:

http://fjallfoss.fcc.gov/ecfs/comment_search/execute?proceeding=04-37&applicant=&lawfirm=&author=&disseminated.minDate=&disseminated.maxDate=&recieved.minDate=6%2F20%2F05&recieved.maxDate=&address.city=&address.state.stateCd=&address.zip=&daNumber=&fileNumber=&submissionTypeId=&__checkbox_exParte=true

During all these filings, the BPL industry, or what is left of it, filed very little. For awhile Current Technologies attempted to duel with us, but they have not filed anything since December 30, 2009, and that was limited to an effort to retain a 40 dB/decade extrapolation factor. Nothing, in fact, has been filed since that date on behalf of the BPL industry until May 4, 2011, when UTC, the Utilities Telecom Council, filed a two-page statement arguing that 35 dB of full time notching of Amateur bands would be detrimental to BPL functioning. The timing, the content and the copy recipients of that letter are very suspicious indeed. Ed Hare and I have reviewed this and are of the view that the UTC letter was solicited by Alan Stilwell, an OET staff person who has been antagonistic to ARRL in this proceeding for a long time now.

While we are content that we have ably argued the necessity for a full-time, 30-35 dB notch of all Amateur bands by BPL users, FCC may well have solicited UTC to file something so that they can have a record basis for affording some lesser relief than that which we have essentially demanded of them for three years now.

The last advocacy effort that the Executive Committee approved was going to be an in-person meeting by Ed Hare and me with OET to explain our technical arguments one more time, especially with respect to the 30-35 dB notch depth. Now that there is an item on circulation among the Commissioners, such a meeting with OET staff would likely be a waste of ARRL resources, so we did not pursue it. We did, however, prepare and file a rebuttal to the two-page UTC filing. We filed that written *ex parte* statement on June 24, 2011, and we are now considering an oral *ex parte* presentation of that material directly to the Chairman's office if there is time. We did in any case copy the Chairman and the other three current Commissioners with that rebuttal to UTC.

What remains to be done is to remind the Enforcement Bureau that no action or response has been received to our December 29, 2010 Complaint to FCC Enforcement Bureau and OET concerning the IBEC BPL systems in southwestern Virginia and in Indiana. And we need to remind the FCC Laboratory, OET, that they have not responded to our February 10, 2011 complaint about the certification of the IBEC modems, establishing that the IBEC modems are substantially overpowered. This was an adjunct to the interference complaints about the IBEC systems. With multiple system measurements in hand which demonstrate that the system operates above the FCC's current radiated emission limits by 10 to 30 dB, we showed in that complaint that the certification was done incorrectly, and the devices should be recalled by FCC for retesting. This IBEC system is so far above the limits that the BPL modems themselves are drawn into serious question.

2. WP Docket 08-63, ReconRobotics, Inc. Request for Waiver of Part 90 of the Commission's Rules for a Video and Audio Surveillance System at 430-450 MHz.

Of the three "theaters of war" at the FCC that we are involved with simultaneously in this proceeding, only one has been resolved to date: Our Petition for Reconsideration of the Waiver granted to Reconrobotics to allow them to operate in the 420-450 MHz band with relatively high transmitted power and an NTSC video emission was essentially denied April 15, 2011, slightly more than a year after we filed it. The FCC Order was disconcerting, in that it essentially ignored most of our very valid arguments, including Ed Hare's technical showings. It was simply wrong for FCC to allow this device to operate in the 420-450 MHz band, and the decision to do so was premised more on the public safety applications of this device and the perceived benefits to first responders than on the spectrum allocations technical issues obviously presented.

That said, *three FCC bureaus*: the Public Safety and Homeland Security Bureau (which bungled this in the first place), the Wireless Telecommunications Bureau, and the Office of Engineering and Technology, were allied against us here. A further administrative appeal would have been quite obviously a waste of time. As well, the issue

was more of the principle than any actual adverse effect: there is very little chance that these devices will cause any interference to Amateur Radio, either individually or in the aggregate, since their deployment will be so limited in time and so scattered geographically. If there is interference, we can deal with it on a case-by-case basis, because Amateur Radio is clearly superior to these devices in allocation status. Almost as unlikely is the chance that Amateur Radio operators will interfere with the device's video feed, and the Order on Reconsideration dealt with that (favorably to us) as a matter of law anyway.

So, the Order does have some good points. In a footnote, FCC declared that no applications had been granted as of the date of the order, so all operation to date by non-Federal customers of ReconRobotics which have used the device have been operating illegally. It also acknowledges that police and firefighters using the device may experience interference, which will have to be tolerated. That exonerates radio amateurs from accusations of causing interference. There is revising labeling, which ARRL had asked for, which clarifies that Amateur Radio interference to the ReconRobotics device must be tolerated. Finally, these devices are something of a hedge against reallocation of the 420-450 MHz band to mobile broadband.

To date, no purchasers have been granted a Part 90 license. Our Petitions to Deny filed in late August of 2010 against each of these applications have not been acted on by FCC. Still an open issue is the proper bandwidth of the device, which has held these applications up for quite awhile so far.

Nor has our complaint, filed with the FCC's laboratory on October 4, 2010, asking the FCC lab to rescind the TCB grant of equipment authorization for the device, been acted on. We had argued that there were several serious mistakes made by the TCB in granting equipment authorization to the device in April of 2010. On January 11, 2011, FCC OET Chief Julius Knapp released a letter notifying us that the FCC Laboratory had referred the matter to OET, and that Knapp "is reviewing the propriety of the subject certification grant" and designating the proceeding as a "permit but disclose" proceeding. We believed from this that that we made our *prima facie* case, but no further has been heard from OET on this so far. It does appear that the Commission did engage in some e-correspondence with ReconRobotics in October and November of 2010 noting that the Test Lab used by ReconRobotics and the TCB erred in specifying the necessary bandwidth and calling for a response from them. The inadequacy of that response probably led to OET in Washington taking this matter back from the laboratory. In the meantime, however, there do not appear to be any pending applications from ReconRobotics to modify the certification grant that we have asked be rescinded.

3. Expansion of 5 MHz Band Operating Privileges; RM-11353; ET Docket No 10-98.

This matter is frustratingly slow to be resolved, and this sloth on OET's part has triggered the ire of the Executive Committee. The FCC Notice of Proposed Rule Making was released May 7, 2010 based on our October 10, 2006 Petition for Rule Making. This week, I asked Julius Knapp about the status of this, and I was told that while Knapp could

not predict exactly when an order would be released, he said it would be "soon". The Executive Committee has instructed that we seek a temporary waiver to permit the use of the new replacement 5 MHz channel and the proposed expanded operating privileges to accommodate the just commenced hurricane season. We will be filing that request immediately, since the Order is not forthcoming necessarily before Hurricane season begins in earnest.

4. ET Docket 08-59; GE Healthcare (GEHC) Proposal for Allocation of the 2390-2400 MHz Band for use by Medical Body-Area Networks (MBANS).

During the last Board meeting, we received from our long-time acquaintance, Dave Siddall, K3ZJ (who is a communications lawyer now in the private sector, but who formerly was a Legal Assistant to former FCC Commissioner Mimi Dawson, and before that, a Congressional Research Service staff attorney), a filing made jointly by GE Healthcare, Philips Healthcare and AFTRCC, the Aerospace and Flight Test Radio Coordinating Council. Represented as an "industry consensus" position, it would allow MBANS (Medical Body Worn Area Networks, really just short range medical telemetry point to point links for patient monitoring) at 2360-2400 MHz. MBANS operation would be on a secondary basis to Flight Test Telemetry and, presumably, to Amateur Radio at 2390-2400 MHz.

This "industry consensus" filing with FCC started a very unpleasant exchange of e-mails between myself and Siddall, the attorney for Philips, because Siddall was basically telling us that this was good for ARRL so we should be happy that they did this deal without involving ARRL. I told him that *we* would evaluate the benefits or drawbacks of the "industry consensus" but it was most certainly not a "consensus" at all since ARRL was not involved in it, and furthermore, *we* would be the judge of what was good for the Amateur Service, not Philips or Siddall, or GE or AFTRCC. Siddall claimed that this deal is good for us because it takes 2300-2305 MHz off the table as a target band for MBANS. While that is true in the abstract, we told Siddall that 2300-2305 MHz was not a real alternative for these devices due to the size of the band and other factors, so that "benefit" is a complete illusion. At that point he stopped trying to sell the plan and turned the matter over to Philips' technical people.

What is bad about the "industry consensus" proposal is that it puts high power MBANS in the 2390-2400 MHz band and the low powered MBANS in the AFTRCC segment at 2360-2390 MHz. We asked what the difference was and why the high power devices were put in the Amateur segment and the low power devices in the AFTRCC segment, when the reverse made more sense, given geographic separations. So far, there is no good answer provided.

At this point, Siddall stopped trying to pacify us and the Philips R&D technical guy took over. He asked for a meeting to discuss this proposal, and Brennan Price and Ed Hare either have or are going to meet with him. The Joint parties have asked FCC to hurry up and approve this deal, however, so negotiations with ARRL are just really window dressing. Ari Fitzgerald, the attorney for GE Healthcare, has been to the

Chairman's office (where he used to work when he was at FCC and had a lot of horsepower there) and has urged that FCC buy this plan without further notice and comment rulemaking.

Meanwhile, ETSI (the European Telecommunications Standards Institute) has been conducting studies of MBANS. It is our understanding that the ETSI Study is to be completed in August, and that there have been some alternative bands proposed in Europe for MBANS. We will be asking the FCC to stand down in this proceeding and to hold off on any consideration of the "industry consensus" until the conclusion of the ETSI study and until after an analysis of the results of that study can be completed.

While the way this was handled is quite objectionable from our perspective, and while it appears that AFTRCC, Philips and GE simply dumped off the high power MBANS in the Amateur allocation, if this proposal is adopted by FCC (which it probably will be) the outcome is really no worse than we thought it would be. The differences in the proposed power levels as between 2360-2390 MHz on the one hand and 2390-2400 MHz on the other, however, require explanation. Also unexplained and unexamined by ARRL so far are the contention-based protocols that GE and Philips say will be used. Perhaps the benefits of these can be explained to the satisfaction of Brennan and Ed, but it is not clear to me how effective they will be in addressing Amateur Radio and MBANS interaction. Finally, as discussed above, the 2390-2400 MHz band is in serious danger from the NBP. If MBANS are operating in that segment, perhaps it is less likely that the FCC will consider any reallocation of the band for broadband use, or the introduction of any other incompatible user.

5. Vehicular Radars at 77-81 GHz. Possible filing by automotive manufacturers to amend Part 15 of the rules to permit operation of vehicular radars to operate at 77-81 GHz in addition to 76-77 GHz.

There occurred a meeting among Brennan Price, Ed Hare and Dr. Michael Mahler of Bosch in Germany in March at the ARRL office in Virginia to consider some compatibility showings prepared by Robert Bosch, GmbH in Germany. Bosch is the leader of a group of international automobile manufacturers which is proposing international harmonization of the band used for short and medium range vehicular radars. Currently, long-range radars are operated in the 76-77 GHz band by FCC Part 15 rules now. Currently, short-range and medium-range radars are operated at 24 MHz, but that operation will cease in Europe and elsewhere in about 2020. There is a plan to standardize the operation of short-range and medium-range radars in the 77-81 GHz range. The Amateur Radio Service has a primary allocation at 77.5-78 MHz and a secondary allocation at 78-81 GHz. The band is also available for radioastronomy.

Because I have a potential conflict of interest in this proceeding (as I have previously disclosed to the Board and to the Executive Committee) Brennan and Ed have conducted negotiations with Bosch thus far. Bosch hopes to demonstrate to ARRL (and it is separately hoping to demonstrate to the National Science Foundation) that there is compatibility between Amateur Radio operation and automotive radars in the 77-81 GHz

band. Bosch's representative is preparing some compatibility showings based on hypothetical Amateur Radio reference circuits provided to him by Brennan and Ed. They will evaluate the level of compatibility between short and medium range vehicular radars at 77-81 GHz and Amateur stations which may occupy that band in the future. Vehicular radar advocates face a difficult battle here though because of potential interference concerns to Radioastronomy in that same band, and it is unclear how long Bosch will be the leader in this effort on behalf of SARA. SARA may have its own officers take this issue over. Bosch makes components for vehicular radars, but the automobile manufacturers have the front-burner obligation to convert from 24 GHz to 77-81 GHz worldwide, within a relatively short period of time.

6. Low Frequency Allocations efforts at 500 kHz and 135.7-137.8 kHz.; James Edwin Whedbee LF Petition for 135.7-137.8 kHz; and ARRL Experimental License, WD2XSH.

It is most appropriate that Brennan Price address this issue. *Domestically*, no action has been taken since the Board meeting with respect to a permanent LF allocation. We have not met with the Utilities Telecom Council (UTC) with respect to our ongoing plan to have allocated domestically to the Amateur Service the 135.7-137.8 kHz band. The FCC did grant a modification to our experimental license, WD2XSH, to include additional frequencies 461-478 kHz, which allows experimentation with frequencies in the band actually being sought for international allocation to Amateur Radio. The utility of this experimental license is debatable, but it is a large-scale experiment and arguably minimally stakes something of a claim in the segments being sought for permanent allocation.

7. ET Docket No. 10-236; Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules.

We filed reply comments only in this proceeding, on April 11, 2011. FCC proposed in a November 30, 3010 NPRM, to: (1) create new opportunities for universities and researchers to use a "wide variety of radio frequencies for experimentation" under a "broad research license" that eliminates the need to obtain prior authorization before conducting individual experiments; (2) allow researchers to conduct tests in specified geographic locations with pre-authorized boundary conditions through the creation of new "innovation zones"; (3) promote advancement in the development of medical radio devices by creating a medical experimental authorization that would be available to qualified hospitals and medical institutions; (4) broaden opportunities for market trials by revising and consolidating the Part 5 rules; (5) promote experimentation by consolidating and streamlining existing rules and procedures; and (6) open new opportunities for experimentation by making targeted modifications to rules and procedures. There are rules proposed in the Notice to implement these goals. It is clearly intended to provide, however, an unregulated environment for broadband experimentation especially. As to the universities, the Commission proposes to allow in essence a license to do ongoing courses of experimentation with "very broad authority."

Our concern with this proceeding includes: (1) interference potential resulting from essentially unregulated experimentation in Amateur allocations, and (2) the likelihood of "spectrum allocations by experimental license" which is a very real problem the way this NPRM is worded. FCC says at paragraph 25 of the NPRM that:

> While we do not believe that it is necessary to impose overly prescriptive methods to control the potential for interference from experiments conducted under the broad authority of a research program experimental radio license, we emphasize that all experiments must be conducted on a non-interference basis to primary and secondary licensees, and that the licensee must take all necessary technical and operational steps to avoid harmful interference to authorized services… Before conducting tests, a licensee must evaluate the propagation characteristics of the frequencies to be used in individual experiments, the operational nature of the services normally operating on those and nearby frequencies, and the specific operations listed within the Commission's licensing databases.

While this is helpful, it is not sufficient to protect ongoing, frequency-agile and mobile Amateur operations in most bands.

Our comments said that basically, there was nothing wrong with the current rules for experimental licenses and STAs. Those rules are minimal and flexible and provide a convenient environment for both longer term and short term experiments. The Commission has regularly granted very wide-bandwidth experimental licenses and STAs quickly and with very few regulatory impediments, for broad-based courses of experimentation for up to five years at a time if the circumstances justify such. Electronically filed applications call for only minimal information and the applications are not burdensome. Multiple experimental licenses are seldom required and renewals are timely and responsively granted. We cited different experiences with non-Amateur experimental licenses and STAs in Amateur allocations, including completely negative experiences with, for example, BPL experimental licenses such as that in Briarcliff Manor, New York. Overall, however, the many experimental licenses and STAs (especially STAs due to the short duration of the experiments and the limited geographic areas over which the experiments are conducted) have been compatible with Amateur Radio operation.

The Commission's proposals, we argued, were vastly overbroad and would permit operation in virtually any band without any prior coordination with incumbent licensees whatsoever. There is no indication that research institutions are skilled in interference avoidance or have any incentive to avoid interference to incumbent licensees. The Notice goes so far as to allow colleges and universities to use whatever means they see fit to avoid interference to incumbents. This is a completely unreasonable delegation of the Commission's regulatory authority.

We did ask however that the Experimental Licensing Branch include as a special condition on all experimental and STA grants issued under Part 5 of the Commission's Rules which specify use of any Amateur Radio allocations that the grantee, prior to commencement of operation in any Amateur allocation, contact ARRL Headquarters (specifically Dan Henderson). ARRL would then forward the information about the operation to the applicable local or regional frequency coordinator in the Amateur Service, or at least publish the information as a "head's up" to Amateurs who might be affected by the grant.

This is a very dangerous proceeding. The FCC is proposing to radically change the concept of an experimental license under this program to create an unregulated environment. In the past few years, an appreciable number of experimental licenses and STA grants have proposed facilities which are facially incompatible with ongoing Amateur Radio operation, so that it is not the case that any experimental operation can proceed without a substantial potential for interference. In many, perhaps most of those cases, the grantee could minimize the interference potential if the grantee's experimental operation is coordinated in advance with a local or regional Amateur Radio frequency coordinator or with ARRL. However, in almost no cases is ARRL or any local coordinator currently contacted by experimental or STA grantees prior to commencement of experimental or STL operation, and the Commission is not proposing to require such contact so far.

8. WT Docket No. 07-293, Amendment of Part 27 Rules Governing Wireless Communications Services in the 2.3 GHz Band.

This docket proceeding was the first implementation of the National Broadband Plan that affects, directly and indirectly, the Amateur Service. On May 20, 2010, FCC released a *Report and Order and Second Report and Order* in a series of dockets dealing with the Wireless Communications Service (WCS) in the 2305-2320 MHz and 2345-2360 MHz bands, and as well the Satellite Digital Audio Radio Service (DARS) band at 2320-2345 MHz. FCC effectively make available the WCS band, formerly available for fixed facilities only, for mobile broadband. This Order (which was NOT issued pursuant to any prior NPRM, so we had no ability to comment in advance), further diminished the availability to Amateurs of the secondary Amateur allocation at 2305-2310 MHz. More seriously, they warned of out-of-band emissions (OOBE) that will harm the 2300-2305 MHz weak signal segment, saying that the Amateur Service will simply have to tolerate this increased noise in their weak-signal operations around 2304 MHz. Virtually no recognition was given in the order of the Amateur secondary allocation at 2305-2310 MHz, but that segment was not particularly useful after the WCS was created and the band auctioned for very flexible applications quite a few years ago now anyway.

We filed our Petition for Reconsideration of this aspect of the Report and Order on September 1, 2010. It is now pending. FCC listed on public notice on September 22, 2010 ours and 5 other Petitions for Reconsideration. Oppositions to our Petition were filed by the WCS Coalition and by AT&T. We filed a reply to those oppositions on October 28, 2010. I am particularly satisfied with our argument in this case, but the

politics of the matter are all wrong. We cited Section 2.102(f) of the Commission's Rules, which states that "(t)he stations of a service shall use frequencies so separated from the limits of a band allocated to that service as not to cause harmful interference to allocated services in immediately adjoining frequency bands." Given this, it is clearly the obligation of the WCS mobile facilities providers to avoid interference to Amateur stations operating in the band 2300-2305 MHz. If this is not the case, we said, the Commission should explain why it is not adhering to Section 2.102(f) (which is derived from the International Radio Regulations, a treaty obligation of the United States). The WCS Coalition made an extremely weak argument that Section 2.102(f) does not apply. It clearly does, however.

The problem really is that the FCC has crowed about this reallocation as a means by which it has already made 25 megahertz available for mobile broadband in accordance with the NBP. It is very unlikely that they will retreat from this allocation, despite any interference that might result to Amateurs operating in the very sensitive 2304 MHz range from mobile WCS above 2305 MHz. And needless to say, any use we might have wanted to make of the segment 2305-2310 MHz is off the table going forward. No action has been taken on this matter by FCC since the January Board meeting.

9. Pave Paws Radar Interference, 70 cm. Sacramento, CA area and Cape Cod, MA.

Dan Henderson and Ed Hare continue to work with the Air Force to minimize the effect of the protection requirements of the two radar sites on local Massachusetts and Northern California repeater systems. The relationship between ARRL and the Air Force is good, and there are some options for approval of new 70 cm repeater systems in Massachusetts, but very few opportunities in Sacramento or within a 150-mile radius of the Beale AFB near Sacramento. There does not appear at present to be any threat to continued Amateur sharing with government radiolocation in the 420-450 MHz band as the result of past instances of interference or the relative difficulty in getting the interference to the radar at Beale AFB to a maintenance level. However, *there will be further measurements taken this Fall in Northern California* and there may be additional interfering signals identified at that time.

10. WT Docket No. 06-49; Amendment of the Part 90 Rules in the 904-909.75 and 919.75 - 928 MHz Bands.

No FCC action has been taken on this matter since the last Board meeting. FCC on March 7, 2006 had released a Notice of Proposed Rule Making, which re-examined the portions of the 902-928 MHz band used for multilateration LMS (this is the high-powered locating system, operated under Part 90, which hasn't caught on very well). FCC wanted to know whether greater opportunities can be provided for LMS service while continuing to accommodate licensed and unlicensed uses of the 902-928 MHz band. ARRL comments, filed May 30, 2006, urged that the Commission look at the 902-928 MHz band allocations on a broader basis. Our comments attempted to protect at least the most sensitive Amateur operations at 902-928 MHz. The proceeding has largely

devolved to a battle among Intelligent Transportation Systems equipment manufacturers that manufacture Mobile LMS devices.

11. ET Docket 09-36; Alfred E. Mann Foundation, Establishment of a Medical Micro-Power Network (MMN) Service.

No action has been taken by the FCC in this docket since the Board meeting. Our comments were filed in August of 2009. This docket continues to have a lot of support among the Commissioners, and it should be expected that this medical implant service, regardless of the wisdom of the choice of frequency band, will likely go forward. In all likelihood, we will have these devices in the 420-450 MHz band, and just above and just below that band as well. We should keep this in mind when considering how to avoid the 420-450 MHz band from becoming a new "junk band."

The Mann Foundation MMN system utilizes operating parameters which, in general, do not appear to create a significant source of interference to licensed radio services, including the Amateur Service, in the band segments 426-432 MHz or 438-444 MHz. Because of redundant interference rejection design, the AMF devices appear to have some reasonable prospect of avoiding the disastrous consequences of RF interference to implanted MMNs. We said that the Commission should not, however, permit the marketing of MMNs or any similar device in the 420-450 MHz band: (1) unless and until thorough RF interference susceptibility testing is conducted on the AMF devices relative to high power Amateur Radio equipment; (2) at parameters other than those inherent in the AMF system, which incorporates notably redundant interference rejection design characteristics; and (3) without very specific patient notifications and labeling of the body-worn MCUs and other portable components which provide firm assurance that the devices will not malfunction in the presence of RF fields from authorized radio services in the same bands.

C. Non-Allocation FCC Regulatory Issues

1. Amateur Use of Narrowband TDMA Part 90 equipment in the Amateur Service (RM-11625).

At the Fall, 2010 EC meeting it was ordered that we should ask the FCC for an interpretation of their rules that would allow single-time-slot TDMA (Time Division Multiple Access) to be used anywhere multiple-time-slot TDMA is authorized in the Amateur Service (i.e. at VHF and above). We filed a letter in December of 2010 asking for such an interpretation. In January of 2011, FCC responded by telephone and said that while they couldn't ignore the language of particular rules, thus making that interpretation difficult, they would entertain a Petition for Rule Making. Furthermore, because they know that there are quite a few TDMA repeater systems out there using Motorola's MotoTRBO digital narrowband (12.5 kHz) TDMA equipment, they were willing to grant a waiver during the pendency of the rulemaking to allow such systems to be used and new ones installed. This was the best deal we could get, and it addressed the incumbent systems, so we accepted the deal. The FCC WTB staff promised that as soon as they gave

our Petition for Rule Making an RM number and put it out for comment, they would grant our waiver request, thus legalizing the present MotoTRBO systems that are in place in the field. As you will see below, they didn't do that.

Because of some historical but apparently unintentional restrictions in the Part 97 rules, the TDMA repeaters (which are multiple-time-slot devices) are arguably legal but the mobiles and portables are not because the emissions used (single-time-slot TDMA, FXD and FXE) is not clearly authorized anywhere in Part 97.

On March 15, 2011 we filed the Petition for Rule Making and a Request for Temporary Waiver following the approval of the Executive Committee per our "deal" with the FCC Mobility Division, WTB staff (i.e. Bill Cross and Scot Stone).

This is a somewhat arcane regulatory problem, but there are apparently more than a few of these MotoTRBO repeater systems being used, and the narrowband character of them should be encouraged. So, at the EC's instruction, and by virtue of a "deal" we cut with the FCC's Mobility Division, we filed the petition and the request for waiver. The waiver is necessary because it takes the FCC a long time to process a rulemaking petition, and these systems are in operation now. FCC said that it was willing to grant the waiver as soon as they gave the Petition a file number and placed it on public notice. However, though they very quickly placed the Petition on Public Notice, *they have not yet granted the Temporary Waiver*. We are *now told* that it will be released this month.

2. MD Docket 10-234, Amendment of CORES Registration System

ARRL's comments were timely filed in this docket March 3, 2011. There were no reply comments called for. There were only four comments filed other than ARRL's and ARRL's were by far the most comprehensive. Comments filed by Sprint Nextel, Frontier, Boeing, and Inmarsat/Vodafone dealt almost exclusively with the "single FRN" issue, which we supported. Those other entities have many different FRNs for license subsidiaries and therefore supported either a single FRN or allowing multiple FRNs but linking them – their issues are not ours at all, as our licensees are mostly individuals. Notably, Fred Maia, W5YI, did not file comments on the proposals that he himself suggested that were aired out in this docket – requiring the updating of CORES data by Amateur licensees, and the mandatory furnishing of telephone numbers, fax numbers and e-mail addresses, which we generally opposed. Thanks in this proceeding to Maria Somma, who provided helpful input at the drafting stage.

3. WT Docket No. 09-209, Amendment of Rules Governing Vanity and Club Station Call Signs.

Our Petition for Partial Reconsideration was timely filed on January 13, 2011. On February 15, 2011, the FCC issued a Public Notice of the filing. There were no oppositions filed by the date they were due or to date. Our Petition dealt with clarification of sections 97.5 and 97.19 of the Rules so that as modified they would better convey the Commission's intention to limit club stations to one vanity call sign per club. Also, we

chastised the FCC for its failure to address the root problem of hoarding of call signs, which is the shortage of call signs in preferred formats. ARRL had proposed a comprehensive plan to make available many new blocks of 1X2 and 2X1 format call signs and to limit the use of those format call signs in the future to United States residents, but the Commission refused to consider any of those ideas. At some point, the Board may wish to consider an additional advocacy effort in this area, since the FCC's rules and call sign assignment policies are in many cases bereft of any rational basis.

4. WT Docket No. 10-62; Automatic Power Control of Spread Spectrum Transmissions.

The Report and Order eliminating the automatic power control requirement but reducing the maximum authorized power for SS emissions to 10 watts was released March 4, 2011. No Petitions for Reconsideration were filed. This is considered a completed action.

5. WT Docket No. 11-7; Glenn A. Baxter Application for License Renewal of K1MAN; Hearing Designation Order.

The Administrative Law Judge, Richard Sippel, has continued this license renewal case until after a trial on a Federal collection action in the U.S. District Court in Maine. Baxter did not pay a large monetary forfeiture from the FCC and unpaid monetary forfeitures can only be collected pursuant to a *de novo* civil action. There is a general requirement that the fact of an unpaid forfeiture cannot be used in any other Commission proceeding unless it is voluntarily paid. The continuation date for the FCC hearing is unstated, but a prehearing conference will be held by the ALJ on September 7, 2011. This case is obviously going to take a very long time to resolve.

6. WT Docket 03-187; Effects of Communications Towers on Migratory Birds.

The question of the environmental impact of the construction or significant alteration of a communications tower has been a matter of controversy for quite some time. Three years ago, when conservation groups challenged the FCC's procedures for the approval of towers and the consideration of the impact that such towers have on migratory birds, the US Court of Appeals ordered the FCC to include more public participation in the determination of whether those towers required detailed environmental studies (an "environmental assessment" or an "EA") before they could be built.

Keep in mind that no FCC rules regarding EAs or local notifications apply to Amateur Radio towers unless they are either (1) over 200 feet in height and require FAA approval before construction, or (2) are located within the glide slope of an airport or heliport and thus require FAA approval. FCC antenna registration is not required for any tower that is not required to be approved by FAA. So it is a small group of Amateur antennas that would be affected, but some would be. Any Amateur antenna which would

require FCC registration would have to give local notice of the fact, a Federal requirement that does not exist now.

On March 25, 2011, the FCC issued Public Notice DA 11-558 seeking comments on draft environmental notice requirements and interim procedures affecting the Antenna Structure Registration process. The new draft rules and procedures include the following:

1. That, before an Antenna Structure Registration ("ASR") is issued by the FCC, any applicant must first give public notice of the construction in a local newspaper or other local media source. The proposal will also be listed on the FCC's website. These notices are to allow the public to comment on the proposal.

2. If an EA is required, the FCC will process that assessment before the filing of the ASR.

3. An EA will preliminarily be required for all requests for an ASR for towers of more than 450 feet to determine its impact on migratory birds, though the FCC may modify this requirement after further study.

This proposal considers the draft requirements for an EA that were set out in a settlement agreement between many affected parties -- including conservation groups, NAB and CTIA. That agreement, while conclusively requiring an EA for towers of over 450 feet, stated that towers between 351 and 450 feet would be dealt with on a case-by-case basis, and left open the question of whether an EA would be required for towers of 350 feet or less.

These requirements will apply not only to new tower construction, but also to construction that makes a "substantial increase in size" of the structure, which is defined in the FCC's rules to look at not only height, but also a substantial increase in the width of the tower, or the area excavated around the base of the tower. Substantial changes in lighting of the tower - to lights that are "less preferred" under FAA guidelines, can also trigger these requirements.

The EA is a document that must be carefully prepared, providing information about the structure proposed, and its likely impact on the surrounding area. In connection with any impact on critical habitats, the analysis must rely on the best commercial and scientific information available to detail the potential impact of the project. This is routinely not something that an applicant prepares on their own, but instead a study that requires expert assistance to prepare. They are expensive and time-consuming. We did not file comments on these procedures, but we continue to monitor this docket proceeding.

II. Antenna and RFI Cases.

1. Palmdale, CA Antenna litigation; Zubarau v. City of Palmdale.

This case is now largely wrapped up, except that ARRL Volunteer Counsel Len Shaffer of Tarzana, CA is putting in a request to the Superior Court for Attorney's fees, somewhat half-heartedly. The Supreme Court of California declined to hear a further appeal from the bizarre decision of the California Court of Appeal.

The case was before the California Court of Appeal, on cross-appeals from (1) the City of Palmdale, which ordered Alec Zubarau's lattice tower removed (not just the unauthorized SteppIR antenna that he had put up on top of the tower), and (2) from Zubarau, who wanted an award of attorney's fees (based on California's "Private Attorney General" statute. On January 27, 2011, the Court of Appeal found that (1) the City properly ordered the tower to be taken down; (2) that the City's ordinance was void for vagueness because it was undecipherable; and (3) that the issue of attorney's fees was remanded to the trial court because it was no longer clear that Zubarau had substantially prevailed on the merits of the case. The Court also made clear that the City had no jurisdiction over RFI and could not regulate antennas on the basis of it. The outcome of the case with respect to issues 2 and 3 were therefore fine.

Issue #1, however, was damaging, because it essentially constituted a construction of PRB-1 that says that any antenna being allowed by the City satisfies PRB-1, even if all international communications are precluded. Zubarau had two small, rooftop mounted VHF/UHF verticals which, the record clearly shows, were not suitable for anything but local communications. The tower was necessary for all HF communications, and the order that it be taken down precluded all such communications. This in the opinion of the Court of Appeal was sufficient under PRB-1.

We cobbled together a Petition for Rehearing and filed it with the Court of Appeal on February 11, 2011. The Court of Appeal did not act on it at all, so, on a timely basis, Len prepared with my assistance and he filed with the California Supreme Court on March 5, 2011 a Petition for Review. ARRL filed on March 8, an "Amicus Curiae Letter" permitted by the Court, endorsing the Zubarau Petition for Review and urging the Court to agree to hear the case. However, the Supreme Court, not unexpectedly, declined to hear the appeal further.

2. Ryan Cairns, K3XC v. Charlotte-Mecklenburg, NC Zoning Authority.
This case is a bit frustrating also. A hearing has been held and the Amateur has been found to have violated a severe setback restriction, and the tower has been ordered to be taken down. I am told that a Class Action lawsuit was being filed on behalf of K3XC by Fred Hopengarten and a rather unorthodox ARRL VC from western North Carolina.

Recall that K3XC filed for a permit, paid his fee and received a permit August 6, 2010 to erect his tower, a 72-foot crankup, with a SteppIR antenna atop it. The only condition was a 4-foot separation between building and tower. Ryan erected the tower in early September, 2010. Shortly after the tower went up, neighbors began to complain to

the zoning department, city council members, and the mayor about interference and aesthetics. Ryan met with several neighbors to address the interference issue. He has offered toroid chokes to cut down interference, and he has beefed up the grounding system of his station, which has abated some of the interference.

On November 23, Ryan was notified that his installation, which had been approved by zoning authorities**,** was in violation of the ordinance. The ordinance, somehow ignored when the permit was granted, requires a 200 foot setback requirement for all "radio and television towers" from all property lines regardless of antenna height or placement on the property**.** This restriction flies in the face of NC 2007-147, the North Carolina state PRB-1 law which permits antennas up to 90 feet absent a clearly articulated justification for a necessary restriction lower than that. When collapsed, Ryan's antenna is 42 feet (with mast) and extended is 72 feet (with mast).

At the hearing, the zoning authorities claimed that they did not have any jurisdiction to hear preemption arguments (which his ridiculous) and that their only issue for resolution was whether or not Ryan's antenna violated the setbacks, which of course it did. So they ordered it taken down.

We have not been involved further in this case since the administrative hearing. Cairns' VC attorney has proven, frankly, very difficult, and seemed to want to control everyone's involvement in the case. They concluded that they would file a class action suit, which we have not seen. They have not at this point asked for any funding for a court challenge to the ordinance. Charlotte-Mecklenburg meanwhile is considering a very restrictive new ordinance with a very low height limitation, which would apparently substitute for the present ordinance and its setback regulation. This is something of an "out of the frying pan, into the fire" situation.

III. Other Legal Matters.

Cynthia Rushton, WB3CNJ, v. ARRL.

This case was resolved favorably to ARRL on March 4, 2011 by the State of Connecticut Commission on Human Rights and Opportunities. However, the complainant has, by means of a long, rambling and not entirely coherent letter (containing numerous misstatements of fact) dated March 11, 2011 appealed to the CCHRO.

In short, the Commission found that "There is no reasonable possibility that further investigation will result in a finding of reasonable cause" that the claimed discrimination asserted by Rushton could be established. Quoting from the CCHRO Decision: "The complainant has not provided any information whatsoever to support her allegation that her physical disabilities were factors in the Respondent's revocation of her credentials as Volunteer Examiner…" The Complainant has not provided specific allegations to support her claim that the Respondent revoked her credentials because she is a female….There is no reasonable possibility that investigating the complaint will result in a reasonable cause finding."

Rushton's appeal letter, four pages, single spaced, was not effectively stated at all. Ms. Rushton was acting *pro se*. Our attorney said that we had no right to respond, and advised against any rebuttal filing despite Rushton's statements that we considered to be misrepresentations. There is no resolution yet of her administrative appeal within the CCHRO. I do not expect the matter to go any farther; the CCHRO's initial finding was that no further investigation could reveal a basis for her complaint. I was surprised, as was our attorney, that the CCHRO found that it had jurisdiction, because to have jurisdiction, Rushton would have had to establish that she was in some sense an "employee" of ARRL, which of course she was not. I will let everyone know when we hear more from the CCHRO on this.

These, and other matters, as necessary, can be discussed at the meeting at the pleasure of the Board. It remains my greatest professional privilege to serve the ARRL Board of Directors. Thank you for the opportunity to continue to do so.

Respectfully submitted,

Christopher D. Imlay

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Christopher D. Imlay
General Counsel