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REPORT OF THE GENERAL COUNSEL TO THE BOARD OF DIRECTORS

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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 2014 in Windsor, CT. 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.

As usual, I attempt in this report to be entirely candid with the Board, and as the result it is *critical* that this report, and all of its contents, be maintained with absolute confidentiality. There are three main topics I want to discuss in the initial part of this memo: H.R. 4969; enforcement; and ARRL bylaw revisions.

H.R. 4969. During the six months since the last Board meeting, my office has been involved in an unprecedented and exceptionally important effort to obtain introduction of our legislation that would extend the PRB-1 protections to all types of land use regulations affecting Amateur Radio antennas. The progress during this time period has been very frustrating until recently. Only in the last days has this effort begun to finally shape up, with the introduction of our Bill, H.R. 4969. I want to explain the details of this so that the Board understands why this delay occurred and what effect it will or will not have on our strategy. I want to note a great deal of support from the Keelen Group in this effort and also the tremendous contributions and over-the-top interest in the project of Director Lisenco (who has asked that I include in my report, to assure confidentiality, a report on the legislative initiative. See **Appendix A** hereto). Finally, I want to allay some fears that have just now popped up in terms of the risk to PRB-1/Section 97.15(b) from the extension of the preemption policy to CC&Rs and our method of selling the Bill.

Since 1985, we have, at every possible opportunity (and when opportunities did not present themselves otherwise we created them) attempted to fix the FCC's error when it issued PRB-1. FCC said in 1985 that because deed restrictions, covenants and HOA regulations were in effect "private agreements" between buyers and sellers of land, therefore those private (i.e. non-government) land use regulations did not concern the FCC. The FCC's premise was wrong then and it has to date never been fixed. CC&Rs are not matters of agreement, except in the sense that a buyer of land can decide not to buy a parcel on which CC&Rs have been imposed. They are, instead, limits on the bundle of rights that a buyer of real property normally acquires when the land is purchased. In some cases, where the CC&R says "no outdoor antennas" (or, these days, "no outdoor antennas except satellite dish antennas of a meter or less and TV broadcast reception antennas") the matter is straightforward. You simply cannot expect to buy a property in that subdivision and erect an Amateur radio antenna outdoors. Some people have a choice. But you can't always choose where you want to live. Sometimes you have to live in an area for reasons related to jobs or schools or family or many other factors besides an avocation. Because of the prevalence of CC&Rs, in many, probably most, suburban areas, a huge and increasing number of hams have to choose between their families' interests and their love of Amateur Radio. Much

more prevalent, however, is the CC&R that says "no outdoor antennas without the approval of the HOA or architectural control committee." Then what? Do you buy the property or not? You can't know whether you will have any ability to install an antenna in advance because the HOA won't adjudicate that in advance of the receipt of an application or request from a homeowner.

PRB-1 was based on two main premises: (1) that there is a "strong Federal interest" in Amateur Radio communications; and (2) that municipal land use regulations which preclude, fail to reasonably accommodate or regulate amateur communications more than the minimum practicable amount should be subject to Federal preemption. But most private land use regulations have precisely the same adverse effect on Amateur Radio communications and therefore frustrate that "strong Federal interest" in precisely the same way as to municipal land use regulations. So why the difference in treatment? FCC held in 1996 that it *has jurisdiction* to preempt private land use regulations relative to antennas. At that time, FCC had instruction from Congress to preempt all types of land use regulation of over-the-air video reception devices. So they told us to go to Congress and get the FCC some instruction if we wanted PRB-1 protections extended to CC&Rs.

That effort became the last project that John Chwat worked on for ARRL. Since 1996, we have had bills introduced by Representative Steve Israel of New York, whose father was a ham, to extend PRB-1 to CC&Rs. The bills went nowhere. After the FCC study Bill and the FCC docket proceeding discussing the effect of CC&Rs on Amateur emergency communications efforts, our effort in 2013 to have a bill introduced instructing FCC to extend the PRB-1 preemption test to private land use regulations was not successful. No bill was introduced last year. We couldn't find a sponsor in 2013. But as it turned out, we planted a few good seeds that ultimately sprouted. Chwat and I had visited the office of Adam Kinzinger of Illinois (one of many cold calls we made), and we accidentally discovered that the Legislative Director that we met with, Josh Baggett, was in fact KK4NDB. And he was very interested in what we had to say. After the meeting, though, nothing more was heard from Josh and we thought that Josh had not been able to persuade Mr. Kinzinger to help us.

After FCC refused our request to afford ARRL a special call sign for our Centennial celebration, President Craigie and Vice President Fenstermaker wrote to Rep. Greg Walden, W7EQI, asking for help. Those requests, as it turns out, opened the door for H.R. 4969. Chwat and I were called in thereafter to speak to Dave Redl, the majority counsel to Rep. Walden's Subcommittee on Communications and Technology on subjects unknown. Redl told us that Walden wanted to help us. He had arranged to get us our commemorative call sign and he wanted to help our CC&R preemption effort as well. Redl had, at Walden's request, been in touch with Kinzinger's office and had arranged for Kinzinger to introduce our Bill, after which it would be supported by Walden. Walden's plan, which he is sticking to, is to have the Bill introduced, get a good number of cosponsors (Redl was not specific but the Keelen Group hopes for 30 cosponsors as a target number) and then Walden will call Roger Sherman, his former staffer, now the FCC Wireless Bureau Chief, and persuade Sherman to apply the PRB-1 language to CC&Rs as well as to municipal land use regulation on its own. We were told to stand down until January of 2014 though because Walden's people had a lot on their plates until early 2014. So we did that. However, Director Lisenco got started early. He got two cosponsorship commitments from congresspersons in districts within Mike's Division and he

made numerous other contacts as well. We prepared materials for the effort once the Bill dropped. We were ready to go.

The effort did not begin, however, until after our January Board Meeting. And it was an inauspicious start: Redl and Baggett called us in (this time it was the Keelen group and me) and presented a draft bill that had apparently been drafted by Baggett. Not to put too fine a point on it, the draft was horrible and we couldn't possibly support it. The draft had been approved by Dave Redl, so we had to do some serious diplomacy in order to get the draft back to where we wanted it to be. The findings of Baggett's draft of the Bill were excellent; they spoke of extending PRB-1 provisions to CC&Rs and noted the escalating difficulties that hams had with CC&Rs. But the operative provision of the Bill, Section 3, would have asked FCC to abandon PRB-1 entirely and to apply to Amateur antennas of all sorts the provisions of the OTARD (Over The Air Reception Devices) policy which applies only to video delivery service antennas. The OTARD test is not at all well-suited to Amateur Radio antennas. Worse, their draft would have *tasked FCC with determining the height of antennas that would be subject to the policy*. It would have effectively undone 30 years of PRB-1 case law. It would have been a disaster. We met with Redl and Baggett and looked over the Bill and we had to tell them that it wouldn't work for us at all. We explained our concerns in a memo and provided them some replacement language. We then proposed replacement language for the operative provision of the Bill.

There followed a very long delay, during which we were worried that the lack of communication on the text of the Bill might have derailed the train. But finally the Bill text was redone through the office of legislative counsel and it was exactly what we had asked for. It is very simple and does not on its face allow FCC to reinterpret the concept of "reasonable accommodation" or to do anything more than to apply the three-part, flexible test to all types of land use regulations. There was a bit of hurt pride in our wholesale restatement of the operative part of the Bill text, I think. Also, it is likely that Baggett had "sold" his boss on this project, being a somewhat enthusiastic ham, and then was obligated to go back to Kinzinger and tell him that we didn't like the original draft. However, we are assured that there is no public relations damage in Kinzinger's office from our insistence on our version of the Bill.

Kinzinger wanted a single Democratic cosponsor before he was willing to drop the Bill for us, so that it would indeed be a bipartisan legislative effort. That turned out to be *very* important to Kinzinger and it is good for us to be able to note that this is a consummate bipartisan Bill. But not any Democrat would do from Kinzinger's perspective. Kinzinger was VERY selective about who would suit him on the minority side. He gave us only three names of "approved" Democrats that we could contact about original cosponsorship. Of the three, we tried first Representative Peter Welch, a Vermont Democrat who apparently works well with Kinzinger. The legislative assistant to Welch was helpful, but there was a very, very long delay between our initial meetings with Welch's staff and a decision on cosponsorship. While we were waiting, we met with the two other Democrats on Kinzinger's list and asked them to be cosponsors, but we mentioned that Welch had been asked to be the original cosponsor with Kinzinger. When Welch ultimately declined (because there had been influential Vermonters unknown to us who urged Welch to stay away from this issue) we went back to Kinzinger and asked for another list of names. We got only a couple more, though we had a number of suggestions of members of Congress who had helped us before. All of our recommendations

were declined by Kinzinger, save for Representative Joe Courtney of Connecticut. It was frustrating, to say the least. We had put Courtney on the list because of his close relationship with Dave and Linda Sumner. Courtney's district does not include ARRL Headquarters. But Courtney had no real reason to back us on this. We met with his chief of staff and a legislative assistant and they were helpful and very supportive but it took a long time for Courtney to make a decision. Make no mistake: there is one reason and one reason only that we have a Bill now: Dave and Linda Sumner were friends with a Congressman. And he helped us because of that.

So we have begun the "full court press" to get cosponsors for this Bill. We will do this through a series of means, and there will be a discussion of this at the grassroots session with the Keelen Group on Sunday after the convention and before the Board meeting.

I would like to address a number of concerns that have been raised recently about the Bill by Board members. First of all, I would like to address the concerns that we have heard from some hams, strangely enough, that say that ARRL is attempting to infringe on private contracts and that a ham who moves into a subdivision encumbered by CC&Rs should know what he or she is getting into and comply with the rules that he or she agreed to when they bought the property. Part of the response to this is addressed above. These are not contracts in the normal sense of the term. They once were, perhaps but now, in modern land transactions, there is no meeting of the minds about this between buyers and sellers of land. They are unilaterally imposed restrictions on land use that burden the land itself. And the vast expansion of CC&R-regulated subdivisions has exploded. We have figures from the Community Associations Institute (CAI), an association of community associations, estimating the numbers of HOA-regulated persons and housing units in the United States (i.e. association-governed communities, housing units and residents over time):

Year	Communities	Housing Units	Residents
1970	10,000	701,000	2.1 million
1980	36,000	3.6 million	9.6 million
1990	130,000	11.6 million	29.6 million
2000	222,500	17.8 million	45.2 million
2002	240,000	19.2 million	48.0 million
2004	260,000	20.8 million	51.8 million
2006	286,000	23.1 million	57.0 million
2008	300,800	24.1 million	59.5 million
2010	309,600	24.8 million	62.0 million
2011	314,200	25.1 million	62.3 million

This exponential growth in CC&Rs in the United States is a major obstacle to radio Amateurs, because it indicates that the ability of a buyer of real property to acquire property that is not burdened by private land use regulations (and thus the ability to erect a reasonable, efficient Amateur Radio antenna at his or her residence) is seriously decreasing. CC&Rs precluding antennas are ubiquitous in the United States and one who wants to (or must due to proximity to work, family etc.) live in a CC&R-regulated community or a planned city, has no choice but to abide by the restrictions established by the private management and governance. *Amateur Radio antennas are severely restricted or precluded entirely in most of them*. CC&Rs are not arms-length contractual negotiations between buyers and sellers of land with respect to

the restrictions. The CC&Rs bound each parcel in a development ***before the buyer ever came to the table***.

The other issue is the risk in this effort of undoing the existing case law of PRB-1 and having FCC spout off about reasonable accommodation being nothing more than an invisible wire in a tree, rather than a 60-foot tower and Yagi antenna. I think the risk of any change to PRB-1 in its codified version as it applies to municipal land use regulations is minimal. *Nothing* in the Bill directs, encourages or permits a re-evaluation of what "no prohibition, reasonable accommodation and least practicable regulation" mean in the context of municipal regulations. There is an outside chance that FCC could do what it did in 1997, which was to attempt to reinterpret reasonable accommodation in the zoning context, but the instructions in the Bill are simple and straightforward: apply the existing three-part test to all types of land use regulations, not just municipal ones. There is 30 years of jurisprudence, including numerous Federal appeals court decisions that apply and interpret that test in the context of municipal land use regulations. FCC has no desire, I am quite sure, to overturn all of that on its own motion.

It is much more likely that, if Rep. Walden makes the call to FCC, and if FCC does what Walden wants (and they most likely will, since this issue is small potatoes to FCC in the overall scheme of things and because to not take Walden's request on this would cause all sorts of potential problems for FCC on other issued which are, to FCC, much more significant.

As to how "reasonable accommodation" translates in the CC&R context, it would be wise to minimize (in written documents) the references to "invisible wires in trees or under eaves of houses" but we *have* to use those examples in discussions with Congressional offices in our oral presentations in order to avoid the impression that ham radio antennas are large and obtrusive and that this legislation would permit a big tower behind each townhouse going forward. When non-technical people who aren't hams and who don't have one in the family think about ham radio these days, they think of big antennas and/or TVI. At a reception I attended a week or two ago with Matt Keelen, I had a U.S. Congressman from Texas tell me that he was familiar with ham radio, and that: "those are some really big antennas you people use." Perpetuating the idea that everyone will want and be entitled to a 50-plus foot tower and yagi at their townhouse if the Bill were to pass is a deal killer. If that impression is presented we will not get cosponsors, and we will be left where we are now, in a critical situation that is getting worse all the time, threatening the very existence of Amateur Radio. There is of course some risk that FCC could attempt to define reasonable accommodation in an HOA context, but we can minimize that risk by regular dialog with Dave Redl and Greg Walden, with whom we and the Keelen folks have a good solid relationship, prior to the time when Walden "makes the call". The implementation of the legislation is very straightforward and offers no need or opportunity for reinterpretation of 30 years of case law.

Meanwhile, we HAVE to get a large number of cosponsors. Mike Lisenco has lined up two already and is making major efforts with his folks to get more. I have had numerous meetings on the Hill with the Keelen folks with great response so far. The Keelen Group But if we don't get more than a few cosponsors, the entire plan is jeopardized. If this works, we could have a huge win, but we need to have a major effort to get cosponsors for this Bill now that it is introduced.

Enforcement. The other subject of primary importance is enforcement. In the months since Travis LeBlanc has taken the helm at FCC's Enforcement Bureau, we have seen signs that Amateur Radio enforcement is slightly improved. It is baby steps, but consider the following, all of which has occurred since the last Board meeting:

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

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

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

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

Riley Hollingsworth and I have finally been able to get a meeting with Mr. LeBlanc for June 10. We have only half an hour, and we have prepared a briefing memo for that meeting, a copy of which is appended to this Board memo as **Appendix B**. We still can't say that we have contributed to any restoration of deterrence of rule violations as we had when Riley was working unencumbered at FCC, but we are working toward that goal. I will have more for you on this at the Board meeting and will report the results of our LeBlanc meeting at that time.

Bylaw Revisions. My final "initial thoughts" topic has to do with the Board's struggle with Bylaw 45 and the likelihood that the Bylaw will be revised, either at this meeting or at a subsequent one. I would like to urge that the Board approach this matter with an eye toward maintaining for itself and for its Elections and Ethics Committee the maximum level of flexibility in addressing future conflict of interest issues when the same inevitably arise. One lesson that should have been learned by everyone from the recent application of Bylaw 45 to the facts of one particular situation is that *bylaw language that restricts options in conflict of interest situations is a really, really bad idea*. The Board expressed a unified desire to fit a remedy to the facts of the case. But no one should be deluded into thinking that such a noble goal was in any sense permitted by the language of Bylaw 45. That language was, and still is as of today, quite inflexible. It is easy to rationalize the refusal of the Board to subject itself to that inflexibility and to take an action that really was not permitted on the face of the Bylaw by simply saying that the Bylaw was internally contradictory or that it wasn't understandable. But the honest truth, looking back on this, is that the Bylaw was not so vague or contradictory that it couldn't be applied to the facts of this case. The simple fact is that it is too rigid in its application, if read in a straightforward manner, and the Board felt that doing substantial justice in this case called for a more flexible approach.

As I have said before, the E&E Committee did, in my view, *precisely* what Bylaw 45 ***compelled*** them to do, and they did so (liking no part of the task) without any alternative reasonably available to them. While the Board does not have the flexibility to ignore the terms of its own Bylaws as a matter of law (and while the Board certainly should not want one of its standing committees to arrogate unto itself the ability to do that either), it effectively did that here, in a good-faith effort to do what it perceived to be the right thing. So be it, done deal.

But let's not, having gone through this process of self-discovery the hard way, make the same mistake twice. Let's look at what we need in a conflicts bylaw and create a new one that, in its application, allows for *flexible remedies* to be applied by the E&E Committee initially, and especially by the Board in the review process. It is always my job to protect the Board's prerogatives. Maintaining flexibility in this context is, I think, an exceptionally important component of that task. We shouldn't tie your hands in any aspect of addressing a conflict situation. The bylaw should keep our options as open as possible, consistent with (1) protecting ARRL's confidential information, and (2) the integrity of the Board's decisionmaking processes.

With that in mind, and having done a good deal of legal research on the subject of conflicts of interest, both during and after the recent conflict issue, I would offer the following, somewhat disparate observations for your consideration. And in doing so, I most heartily ask that the Board not rush to judgment on this, or attempt to make the full Board into a drafting committee at what will be an abbreviated Board meeting this month. Whoever made the suggestion that the redrafting of Bylaw 45 be a committee activity was, I think, wise to do so. I think it is the right way to go. I hope to contribute to the process. Consider the following points:

1. ARRL is almost unique in incorporating in its conflicts policy *any* disqualification provision. The vast majority of conflicts provisions in non-profit association bylaws incorporate two components and two only: (a) reporting of conflicts, and (b) recusal. By the combination of those two concepts (i.e. obligations), virtually all nonprofits protect the two important goals of a conflicts policy: to protect the business secrets of an organization (which even nonprofits have) and to protect the integrity and the perceived integrity of the Board's decisionmaking processes.

2. The disclosure provision is an *individual obligation* of the Board member. The failure of a member of the Board (which, for us, includes vice-directors, though there is no such concept in other non-profit organizations) to make a timely and candid disclosure of a conflict is a *very serious breach of that member's fiduciary obligation to the corporation and it should be treated harshly*. In some jurisprudence, the lack of candor is the equivalent to a misrepresentation. The following, which I think is most *apropos* to us, is from a non-profit association's conflicts policy:

> A "conflict of interest" exists when a person in a position of trust has competing professional or personal interests. There's nothing shameful in having these competing interests, but they can make it difficult to act impartially. How we acknowledge and act on our conflicts of interest are what brings us credit or condemnation. We are familiar with conflicts of interest that arise when a person receives compensation or other rewards as a result of a vote, policy, or other action. But conflicts of interest do not always involve money; they can reward someone's professional standing, give them an exclusive interest in a project or policy, or advance a family member. A conflict of interest exists even if no unethical or improper act results from it. A conflict can be mitigated in several ways—but it still exists. Conflicts occur because we have multiple interests, affiliations, and positions of responsibility within the

[avocation]. In these situations a person will sometimes owe identical duties of loyalty to two or more organizations or groups. If we don't acknowledge our competing loyalties, a conflict of interest can create an appearance of impropriety that can undermine confidence in the person, in the organization, or in the [avocation]. Conflicts of interest that stay hidden are undesirable because they place the interests of one person ahead of the organization's obligations to its mission and its members. They also reflect poorly on the person involved and on the groups, businesses, and causes with which they are affiliated.

How do board members handle conflicts of interest when doing board business? Board members should annually have a chance to update their conflict of interest forms; if something comes up in mid-year, you can get in touch with the board officer responsible for updating the form. At the same time, we sometimes find ourselves in situations that the form doesn't cover. So, in board meetings, subcommittee meetings, focus issues groups, email exchanges, and conferences calls, we are asked to self-identify conflicts of interest when they arise. For example, at a meeting when the board is discussing something such as [an agreement] the board member who happens to [have an interest in that agreement] would want to get on the list of speakers and, when called on, would want to state that they have a role that the member believes constitutes a conflict of interest. That disclosure then belongs to the group, and it can decide how to handle it. The chair would announce that the disclosure has been made. If board members want more information about the conflict of interest, the chair can ask the member to provide it. Then the board would discuss and possibly vote on one of several courses of action that are possible.

1. Board members might conclude that the public disclosure is sufficient. Board members might conclude that the public disclosure is sufficient and that the member can participate in the discussion and vote because everyone can filter any comments, knowing of the board member's interest in the topic.
2. The board might decide that the member should not participate in the discussion, except to provide factual information when and if the group specifically requests it from the board member.
3. The board might determine that the board member should neither discuss nor vote on the matter, but can remain in the room to hear the discussion.
4. The board might decide that the board member should leave the room during the discussion and vote, to recuse him or herself.

What is my ethical obligation if I know that someone is not self-disclosing a conflict of interest? For example, if everyone already knows that a member has a conflict of interest, then the member is wrong not to disclose it, but the group also already has the information and can filter the member's contributions to the conversation. If everyone in the group does NOT know that the member has a conflict of interest and the conflict has not been disclosed, two options are possible:
1. You could speak privately with the member during a break, or pass the member a note, or email the member privately if you're discussing something over email, and explain why you think the member has a conflict of interest and give the member the opportunity to disclose it.
2. Or, if a private communication isn't possible, you could announce to the group, as politely and professionally as possible, that you believe the member has a conflict that needs to be disclosed. That announcement then belongs to the group, which must determine how to handle it.

The integrity of the board's processes and decisions depends on respecting the fact that conflicts of interest are always present. It's how we acknowledge and address them that matters.

3. From the above, it is clear that there are many different versions of recusal. It would in my view be a *major error to attempt to define recusal in a restrictive or limited way*. That unnecessarily restricts the Board's options and as you can see from the above, different fact patterns necessitate different responses to a conflict disclosure. In this context, it has been suggested that Connecticut non-profit corporation statutes do not mandate the removal from the room of a person with a disclosed or determined conflict. That is true only in the sense that Connecticut statutes make no provision about recusal one way or another. They are silent on the subject.

4. I would recommend, in revising Bylaw 45, that any committee that is assembled to address this issue consider the following reconfiguration of Bylaw 45: (a) incorporate only disclosure and recusal provisions and *do not include any disqualification provision*; and (b) charge the E&E Committee with overseeing the effectuation of the disclosure obligation (including determinations of failure to disclose) and the determination of conflicts not disclosed by a Board member, but (c) leave the configuration of the recusal obligation once a conflict is found by the E&E Committee to the full Board (in every case) to address on a case-by-case basis, after the finding by the E&E that a conflict situation exists. Finally, (d) keep all recusal configurations available for the Board to apply on a case-by-case basis.

Recusal can have four basic configurations:

(a) The interested Board member should leave the meeting room so the remaining directors can freely discuss and vote on the issue. Once the vote is taken, the recused director may return to the meeting. In cases meriting this action, the Board may feel that, if the interested Board member were to stay in the meeting, his or her presence could inhibit the Board's discussion and influence the vote. Further the conflicted Board member's mere presence, or knowledge thereafter, might also subtly influence the decisions of other Board members who must maintain an ongoing relationship with him or her;

(b) The interested Board member may be allowed to remain in the room but not participate in the discussions or vote;

(c) The interested Board member may be allowed to remain in the room and participate in the discussions but not vote; or

(d) the interested Board member may be allowed to remain in the room and participate in the discussions and vote, if it is the collective view of the Board that the person's disclosure is sufficient and that the person is able to dispassionately provide some level of expertise to the issue to which the conflict relates.

My suggestion is that incorporating only one of these alternative responses to a conflict disclosure (or an E&E finding that there is a conflict that has not been disclosed) is an artificial restriction on the Board and ties its hands procedurally. I think that is a mistake.

B. Spectrum Allocation Issues.

1. ET Docket 12-338, Amendment of Parts 1, 2, 15, 74, 78, 87, 90 & 97 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva 2007), Other Allocation Issues, and Related Rule Updates; 135.7-137.8 kHz and 1900-2000 kHz primary allocation;

-And-

RM-_________, ARRL Petition for Rule Making to Amend Parts 2 and 97 to Create a New MF Allocation for the Amateur Service at 472-479 kHz. (Petition filed November 29, 2012).

I spoke a year ago with Julie Knapp and Jamison Prime at OET, FCC about ARRL's

November 29, 2012 Petition for Rule Making proposing the allocation of the band 472-479 kHz to the Amateur Radio Service domestically, as per the WRC-12 action creating the international allocation to the Amateur Service. ARRL's petition has not received a file number or been released for comment to date. Knapp and Prime indicated to me by telephone then that their plan (which I told them that we supported) was to issue a Report and Order and Further NPRM in Docket 12-338, the WRC-07 implementation docket, which would address the ARRL petition. They indicated to me that the plan was to release the R&O and FNPRM during the "Fall of 2013." That obviously didn't happen, so I sent them an e-mail in January of 2014 before the last Board meeting, to which I got no response until Jamison Prime called me on the phone and said that he didn't know if Julie had gotten back to me or not (I quickly told him that no one had done so) and that the plan was still to issue a Further NPRM in Docket 12-338 to propose the allocation of 472-479 kHz to the Amateur Service. I told Jamison that I had asked because of a meeting of the ARRL Board of Directors and that this was a matter of some importance with them. I asked him if he had any idea when the Report and Order and Further NPRM would be issued and he said no, he didn't; that the docket was still "in the Bureau" meaning that no draft document was completed or had been sent to the Commissioners for review (which I already knew). He would not even give me a prediction as to which quarter of 2014 this would be addressed, noting that the OET docket schedule was not under the Bureau's control at all and that other reallocation issues had taken precedence (read "broadband reallocations to facilitate auctions"). So, there is no news and what we don't know isn't good in terms of timing on this. I will keep pushing periodically to get this resolved and have a "ping" in to Jameson Prime as of right now about it. The FCC list of items on circulation does not include this item yet (as of today, July 7, 2014).

I have said before that this procedural route that OET has chosen has implications for us relative to the 135.7-137.8 kHz allocation. I tend to (somewhat pessimistically) anticipate that we will be denied access to the LF band (135.7-137.8 kHz) in the long-anticipated order part of the next document, but that we will be successful in obtaining access to the MF band (472-479 kHz) allocation. The problem with the LF proposal is the same one that doomed our effort to obtain it earlier: there is a complex issue of interaction between Amateur LF operation and power line carrier (PLC) operation. That is far less of an issue in the MF segment due to the far larger number of PLCs that operate in the LF range than in the MF range. A fear that we have had all along in this more recent effort to obtain both bands is that FCC might trade off the MF band for the LF band. Now, though it makes some sense from FCC's perspective to deal with both of these Amateur allocations at the same time (despite the fact that they were made internationally at two separate WRCs), the fear that we had before may be realized: FCC might well deny us access to the 135.7-137.8 kHz band but propose to allocate 472-479 kHz to us, in the same docket.

2. 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.

FCC released its Notice of Proposed Rulemaking in this docket on February 20, 2013**.** It would revise the Part 15 rules governing unlicensed national information infrastructure (U-NII) devices in the 5 GHz band. These devices presently operate in the frequency bands 5.15-5.35 GHz and 5.47-5.825 GHz. They use wideband digital modulation techniques to provide a wide

array of high data rate mobile and fixed communications for individuals, businesses and institutions. Slightly different rules apply to 5.825-5.850 GHz. Among the changes being proposed are two additional bands totaling 195 MHz for unlicensed operation: 5.35-5.47 GHz and 5.85-5.925 GHz. The Amateur Radio Service has a secondary allocation at 5.65-5.925 GHz, including an Amateur Satellite Service uplink allocation of 5.65-5.67 GHz and a downlink allocation of 5.83-5.85 GHz. The FCC proposes to modify certain technical requirements for U-NII devices to ensure that the devices do not cause harmful interference and thus can continue to operate in the 5 GHz band and make broadband technologies available for consumers and businesses.

Section 6406 (a) of the Middle Class Tax Relief and Job Creation Act of 2012 required NTIA to study and submit a report on the 5.85-5.925 GHz band not later than August of 2013. Based on that legislation, NTIA released in 2013 an evaluation of the 5.35-5.47 GHz and 5.85-5.925 GHz bands that details the existing occupancy of these bands by federal and non-federal users and the potential risks of expanded unlicensed use.

U-NII expansion is part of a plan to have universal Wi-Fi available. For that reason, and because it is rooted in specific legislation (though Congress did not require FCC to allocate the 5.85-5.925 GHz band for unlicensed broadband), there is not a lot of flexibility. It will likely happen as proposed, and this will likely lead to a significantly more intensive Part 15 use of that segment of the 5 GHz band. We filed comments on May 28, 2013 arguing that the Amateur Radio Service has a good record as a spectrum partner with the other licensed services in the 5 GHz band, and that meaningful access to the 5 GHz band for amateur and amateur satellite operations continues to be in the public interest. We noted that we have been sharing with high powered Part 15 devices in <u>parts</u> of the 5650-5925 MHz band for many years without significant evidence of incompatibility. Section 15.247 of FCC rules permits high-powered (1 Watt peak output power) wideband digital devices at 5725-5850 MHz. FCC said at paragraph 94 of the NPRM that the Amateur Service is secondary in the 5850-5925 MHz subband to fixed satellite (Earth to space) and mobile services, consisting principally of Dedicated Short Range Communications Service devices (DSRC) (such as vehicle-to-roadside communications and other intelligent transportation services), and to stations in other countries authorized in the fixed service. FCC said that it “does not have detailed information on use of this band by amateur service stations.” In fact, documented Amateur occupancy of this band is scarce. In this segment there are government radars as well.

ITS America expressed to NTIA grave concerns about harm from this proposal to high-data rate DSRC systems, including Vehicle to Vehicle and Vehicle to Roadside Infrastructure systems.

We filed reply comments on that date, arguing in effect that any decision on U-NII authorization in the 5.85-5.925 GHz band should await a full and complete evaluation of interference potential and interference mitigation techniques among the varied incumbent users of that segment, and an opportunity for the public to evaluate the results of the NTIA study on compatibility. There is no firm timetable for Commission action in this proceeding, but because it is broadband-based, it should move in 2014.

Senator Rubio of Florida, in late June, introduced a Bill, S.2505, the "Wi-Fi Innovation Act" that calls for the allowing of U-NII devices in the 5.85-5.925 GHz band. That Bill looks toward making the band available on a widespread basis for commercial development by unlicensed devices. It also calls for a study of compatibility between unlicensed broadband in the segment and DSRC intelligent transportation systems. No mention of Amateur Radio is found anywhere in the discussions, and our ability to use that band is, as a practical matter, in grave doubt going forward, though no one has proposed to delete the Amateur allocation.

3. RM-11715; Mimosa Networks, Inc. Petition for Rule Making, proposing Part 90 Mobile allocation in the 10.0-10.5 GHz band; impact on Amateur secondary allocation at 10.0-10.5 GHz.

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

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

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

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

Mimosa is <u>not</u> asking that Amateur use of the band be compromised or precluded and they attempted a conciliatory approach in their Petition. They proposed to protect Amateur operations in this band by several means, including the mandatory use by wireless broadband systems of "contention-based protocols." We noted that this would <u>not</u> prevent interference to Amateur Radio weak signal reception across long transmission paths. We also argued that the Petition does not propose any out-of-channel emission limits, so there would be a substantial increase in the noise floor of this band in the segments that they argue we do use if their plan were to be successful. Mimosa suggests using "band plans" that would channelize the mobile broadband systems and backhaul fixed links to avoid "popular Amateur Radio segments" including our traditional weak signal segment. Their bandplan (which they are NOT proposing to incorporate in the Rules) would be the basis for "urging" Part 90 licensees to avoid the weak

signal segment near 10.360 GHz and as well the entire Amateur Satellite allocation in this band. Finally, they proposed a footnote in the domestic table of allocations that would require that mobile Part 90 wireless systems protect Amateur Radio.

This proposal is being billed as a mobile broadband allocation so it is to be taken very seriously. Because our comments opposed this in strong terms, Mimosa's initial effort to avoid a confrontation with ARRL about this failed. We argued as a jurisdictional matter that US Footnote 128, deprives the FCC of jurisdiction to make this allocation, at least without some buy-in from NTIA. Brennan Price spoke with NTIA staff, which is now aware of the problem with the US Footnote. NTIA has made no commitment thus far, but Brennan has been charged with continuing to press them to retain the Footnote and to keep Mimosa out of this band.

Mimosa filed some very aggressive reply comments, but they were in our view ineffective in rebutting the Footnote 128 argument. Should NTIA agree, however, to change that footnote, FCC would be able to proceed with the Mimosa petition. This is the Achilles Heel that exists in our strategy.

Brennan has also opined that what Mimosa proposes domestically runs counter to what the rest of the world is considering. There is a WRC-15 agenda item (1.12) considering 10-10.5 GHz (among other bands) for an expansion of up to 600 MHz for the earth exploration satellite service (EESS) allocation at 9300-9900 MHz. The text of the item and the IARU position are shown below:

> Agenda Item 1.12 – "to consider an extension of the current worldwide allocation to the Earth exploration-satellite (active) service in the frequency band 9 300 - 9 900 MHz by up to 600 MHz with the frequency bands 8 700 - 9 300 MHz and/or 9 900 - 10 500 MHz, in accordance with Resolution 652 (WRC-12);"

We coexist with EESS at 432-438 MHz without too much difficulty under conditions specified in an ITU Recommendation. IARU's position suggests a similar outcome for WRC-15 agenda item 1.12. The 10-10.5 GHz band is also nominally under consideration for expansion of the fixed satellite service in ITU Region 1 only, under WRC-15 agenda item 1.6.1. Brennan's impression is that the United States would prefer no change on 1.12. If a change is made under 1.12, the United States would prefer EESS to be expanded above 9900 MHz. Other countries appear to prefer below 9300 MHz. So, Mimosa's proposal may be contrary to the development of a United States position for WRC-15 on the 10 GHz band.

The IARU's position is that the band 10.0-10.5 GHz is allocated to the amateur service on a secondary basis. It is a popular band for amateur experimentation, investigation of propagation phenomena, and point-to-point communication between networked repeater stations. The band 10.45-10.5 GHz is allocated to the amateur-satellite service on a secondary basis. Owing to the popularity of the 10.0-10.5 GHz band for terrestrial amateur communication, increased use of this allocation for amateur satellite communication is anticipated. The IARU requests that existing and future use of this band be taken into account and continue to be provided for.

We continue to watch this proceeding very closely.

4. RM-11651, Lockheed-Martin Corporation Petition to Relax Part 15 Rules for RFID Systems at 433 MHz.

I am pleased to report that on May 14, 2014 this Petition for Rule Making was dismissed without prejudice by FCC. It had been filed by Lockheed Martin Corporation on October 11, 2011. Lockheed had requested that the Commission amend Part 15 of its rules to eliminate restrictions on radio frequency identification (RFID) systems in the 433 MHz band. Lockheed Martin sold its RFID business, Savi Technologies, in 2012. Because of that, Lockheed, by letter of May 6, 2014 requested that the petition be withdrawn and the proceeding terminated without prejudice. FCC noted that comments were filed both in support of and in opposition to the petition. But that it did "not find sufficient basis to propose rules based on these filings" on its own motion. Accordingly, FCC found that the original petition does not warrant consideration by the Commission and that it was appropriate to dismiss the petition and close the record in this proceeding. Ominously, however, it said that "any party interested in pursuing changes to the rules for RFID operations in the 433 MHz band may file a new petition. So far nothing has been filed.

This is not unexpected and it is good news. The proposed changes would have furthered the terrible gutting of the periodic radiator rules for very high-power RFID tags near 433 MHz by eliminating the geographic limitations that restricted these high-power, high-duty-cycle devices to commercial and industrial areas, and it would have allowed even higher power RFID systems. We fought Savi technologies some years ago, before Lockheed bought Savi, and FCC attempted to split the baby in its order. Apparently Savi was not successful in finding a market for the 433 MHz RFID system which was developed in the Middle East for the military originally.

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

This proceeding, too, a <u>very</u> long-pending one, has been terminated by FCC by Order released June 10, 2014, without action.

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

FCC released on December 20, 2011 an Order granting a waiver of some multilateration LMS rules to a company called Progeny affecting Part 90 LMS operation by this company in the

902-928 MHz band. FCC granted this waiver to enable Progeny to utilize a more advanced and efficient multilateration location service than had been contemplated when the rules were established in 1995. Further, FCC granted a limited waiver of a Part 90 rule which provides that multilateration LMS systems' "primary" operations involve the provision of vehicle location services. FCC therefore enabled Progeny to make its service equally available to other mobile devices so long as Progeny provides its location service to both vehicular and non-vehicular location services. This will facilitate the deployment of a multilateration service that can provide highly accurate location determinations, including more precise location information that can improve delivery of E 911 emergency services. It will translate to more noise for Amateur operations in the 902-928 MHz band. Progeny has 228 licenses including two 6 MHz bandwidth channels in 113 Economic Areas around the country.

So, FCC said that because of "recent developments pertaining to M-LMS operations in the 902-928 MHz band, we conclude that the various proposals for wholesale revisions of the applicable rules do not merit further consideration at this time. Accordingly, we terminate this proceeding." It said that, in initiating the rulemaking in 2006, it sought to evaluate whether to make various significant changes of the rules applicable to M-LMS to ensure that this service can be deployed in an effective and efficient manner and that "[o]ur goal in this proceeding is to consider whether greater opportunity can be afforded M-LMS licensees to provide services while ensuring continued access for other licensed and unlicensed uses that share this band." However, because of "wholesale changes to existing M-LMS framework" are not warranted and the existing M-LMS framework can provide M-LMS licensees with sufficient opportunities to provide service offerings. Thus, because Progeny had come along, FCC concluded that terminating this rulemaking "serves the public interest at this time."

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

There is nothing new on this issue since the January Board meeting domestically, though Brennan Price may have some updates for you on the International Bureau proceeding and preparations for WRC-15 affecting the 77.5-78 GHz band. The petition that I filed on behalf of my client Robert Bosch, LLC (and other automobile manufacturers and automotive radar manufacturers worldwide) to standardize the operation of unlicensed, short-range and medium-range vehicular radars in the 77-81 GHz range in the United States on a Part 15 basis was placed on public notice on July 17, 2012. Comments were due in August of 2012 and reply comments later that same month. There were no opposing comments filed but several supporting comments were filed by automobile manufacturers. This is a domestic version of a worldwide effort to consolidate newer automotive safety functions in automobiles in the band 76-81 GHz. The band is already in use in Europe for this purpose. Applications include automatic braking, sideward and rearward anti-collision systems, and other safety systems. There is no threat to continued Amateur Radio unrestricted access to our primary allocation at 77.5-78 MHz or our secondary allocation at 78-81 GHz. The Petition will allegedly be addressed by a Notice of Proposed Rule Making sometime during 2014 but the FCC's Office of Engineering and Technology is notably

inaccurate with predictions about timing of release of items within its jurisdiction. They inform me that there is a draft NPRM that is still within OET, and there is no timetable for this to move, due to other OET items related to the broadband auction of the UHF Television band, which are clearly taking priority over anything else at OET at this time.

7. ET Docket 13-101; Receiver Performance Standards; Technological Advisory Council White Paper.

On April 22, 2013 the Commission released a Public Notice asking for comments on a white paper prepared for the Commission by its Technological Advisory Council (TAC). We have had a delegate on this Council in its various iterations for some time, and continue to have representation on the TAC. The TAC did a study, released February 6, 2013, on the use of "harm claim thresholds" in improving interference tolerance of wireless systems. The TAC study postulates that increased spectrum user density is the inevitable result of new wireless services and that the intensification of use of the wireless spectrum will necessitate new overlays of dissimilar radio services in shared spectrum. Therefore, it concludes, it will be necessary to depart from the regulatory model that the FCC has utilized for spectrum allocations. The longstanding model has, almost without exception, put limits only on transmitters. However, the inability of receivers to reject out-of-band emissions, for example, constrains new allocations in adjacent bands. This inefficiency can no longer be tolerated, says the TAC, due to the full deployment of the radio spectrum. So the TAC urges a "holistic" approach to transmitter and receiver performance. It is not necessary to regulate manufacturers of receivers, says the TAC, but only to establish an "interference limits policy" by establishing harm claim thresholds (HCTs) on in-band and out-of-band signals. These are signal strength limits, expressed in terms of field strength density or power flux density at a percentage of times and locations within a service area. We filed extensive comments on this same subject in 2003 in Docket 03-65, a notice of inquiry that was never resolved, which considered an intention to regulate receiver performance (i.e. interference immunity) specifications to encourage more efficient use of the spectrum. ARRL encouraged this effort at that time.

HCTs would determine only a threshold condition and therefore determine the ability of an interference victim to seek a remedy from the FCC. This would suit many radio services, but not, they say, safety of life services such as aviation and public safety. The TAC proposes that these HCTs would be established by a "multi-stakeholder process" that suggests that it would be done in the private sector, encouraged but not determined by the FCC.

No action has been taken in this proceeding since the July, 2013 Board Meeting. Our comments were filed July 22, 2013. They argued principally that the Amateur Service is ill-suited to a "harm claim threshold" to the extent that minimum receiver performance determines as a threshold matter whether or not an interference victim can or cannot complain of the interference. There is a great need, however, for minimum performance standards, perhaps even mandatory standards, for receivers in home electronic equipment to make them less susceptible to unwanted RF signals.

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

This matter is still pending, as it turns out, in the Public Safety and Homeland Security Bureau at FCC rather than in the Wireless Bureau, where it had been. We filed a Petition for Reconsideration of a February 6, 2012 letter order of Scot Stone of WTB. Stone had granted to ReconRobotics a modification of the 2010 waiver granted to ReconRobotics authorizing the sale and marketing of the Recon Scout. ReconRobotics asked for authority to sell up to 8,000 of these devices to customers during each of the third and fourth years following equipment authorization of the device. ReconRobotics also asked that any number of devices fewer than the maximum number permitted to be sold in any prior year which were not sold in each of those prior years be permitted to be carried over to future years, so that the limits imposed during a given year could be exceeded by those aggregate amounts of prior-year unsold units. Scot Stone's letter Order of February 6, 2012 stated that the Commission "need not revisit the (annual) Recon Scout sales limits every two years." Instead, without prior notice and comment, and without any explanation, the Order established an annual limit of 8,000 Recon Scout device sales for *all subsequent years*, and allowed unlimited "rollover" of unsold devices from prior years fewer than the annual maxima. ARRL filed its Petition for Reconsideration in the docket proceeding on March 6, 2012. We argued that there was no valid justification for the arbitrary specification of 8,000 annual unit sales, for the unlimited rollover sales provision, and for the elimination of FCC's periodic review of deployment of the number of units.

Dave Sumner and I, while in an introductory meeting with the relatively new FCC Wireless Telecommunications Bureau Chief Roger Sherman in late March, mentioned this long pending Petition for Reconsideration to Roger Sherman. We complained that this Petition for Reconsideration was long overdue. Scot Stone was in that meeting and told us that all Reconrobotics issues had been assumed by the Public Safety and Homeland Security Bureau, which we would have to consult about this (apparently lost) Petition for Reconsideration. We have not done so yet but will shortly, now that the August recess is up on the Hill and we will have a few free minutes then to catch up with FCC matters.

9. RF Lighting Device Complaint to FCC (Complaint Filed with FCC March 12, 2014 regarding Lumatek RF Lighting Ballast); Part 15 and Part 18 RF devices, especially RF Lighting devices.

This is not a docket proceeding but it is directly related to spectrum protection so I am putting it in this category in this report. We filed our complaint with FCC with respect to an RF electronic ballast "grow light" and received a large amount of praise for doing so. After the filing of the Petition, we received a call from an attorney in Santa Rosa, California representing a company called Hydrofarm, which sells a wide range of RF ballasts, but not currently any Lumatek devices. It appears as though the Lumatek device is no longer being imported and Hydrofarm says that they were never the "importer" of the device (though Lumatek claimed that Hydrofarm is their "distributor" in the U.S.). Indeed, it gradually came out that Hydrofarm and Lumatek were involved in some litigation and Hydrofarm's lawyer made Lumatek out to be a sleazy, one-person importing operation. Hydrofarm sells a large number of these RF lighting ballasts, some of which we have tested and found to be far over the Part 18 conducted emission

limits. Hydrofarm offered to allow our lab to test some of its other devices that they retail, but they wanted us to clarify to FCC that Hydrofarm is not the importer of the Lumatek device and that they are no longer selling the product. Indeed, Hydrofarm's web site indicates that they are selling a lot of RF ballasts but nothing made by Lumatek. So we did the clarification.

Ed Hare and Mike Gruber have done a fine job of testing and reporting on a successor Lumatek device which exhibits nearly the same excessive conducted emissions as did the earlier device under test, and as well two other RF ballasts, both being far overpowered.

We did not, after some discussions I had with the National Association of Broadcasters, get the level of support that I had anticipated for this initiative. This is true even though the interference to Amateur Radio HF communications caused by these devices affects equally NAB's AM Broadcast licensee members (of which there are still some, though not many). NAB has not been overly enthusiastic about the likelihood of reduction of ambient noise in the AM Broadcast band. I did include, in comments filed by the Society of Broadcast Engineers in the "AM Improvement Docket" references to this Lumatek testing by ARRL as an explanation of the absolute need to get control over Part 15 and Part 18 devices in order to alleviate a major obstacle to revitalization of AM broadcasting, if that is possible. Again, this was very well received in the broadcast community.

While we continue our dialog with Hydrofarm about these devices, we need to keep the pressure on FCC and we will file the remaining test results papers that Ed and Mike generated from the Lab. We are aware from information Ed Hare obtained that FCC is looking into RF lighting ballasts on their own now, inevitably as the result of our filing of the Lumatek complaint.

While there are several miscellaneous Part 15 and Part 18 changes necessary to help limit noise in Amateur MF and HF bands especially, the bulk of this problem is an enforcement problem with respect to existing limits. The question is how ARRL, without expending resources unavailable in the ARRL laboratory testing large numbers of devices that we would normally have to purchase in order to test, can establish a basis for asking for a widespread FCC enforcement effort on these serious spectrum polluters.

C. Non-Allocation FCC Regulatory Issues

1. RM-11708, ARRL Petition for Rule Making to delete restrictions on symbol rates for data communications and to establish a 2.8 kilohertz maximum occupied bandwidth for data emissions below 29.7 MHz.

At the time of the Executive Committee meeting in late March, the FCC's electronic comment filing system showed that there were approximately 930 comments filed in response to this Petition. When Dave Sumner and I met with Roger Sherman and the Mobility Division staff in late March we mentioned this petition briefly. We thanked FCC for the startling speed with which the Petition was placed on public notice: it was filed November 15, 2013, and placed on public notice November 21, 2013.

We noted that there was a lot of interest in the Petition, because there were more than 900 comments filed, which is inordinately high, and that the majority of the comments were favorable toward the proposal, which was gratifying. That has now changed somewhat. There are as of this writing 1,518 comments on the Petition and more are pouring in every day (completely contrary to FCC's rules, though FCC will do nothing to stop the late filings and it will review them all when deciding how to dispose of the Petition). The recent filings are overwhelmingly based on a fundamental mistake of fact: the allegation of the opponents is that the petition will allow wideband Winlink *automatically controlled* data stations in what they refer to as the "CW/RTTY subbands."

I know that many Board members and officers have heard strenuous opposition to this Petition from a few individuals, almost all of it received subsequent to the deadline for filing comments in response to the Petition. The reply comment period is also long closed. There is a good deal of misperception among the opponents of the Petition. They demand "protection" from data stations operating in the "CW" subbands. They urge that "wideband" data be relegated to the phone bands. These suggestions reflect some fundamental misunderstandings about the regulatory structure of the HF bands. The segments which are at issue here are the "RTTY/data" subbands. There are no CW subbands. There is no change proposed with respect to this. And as of now, digital data is not permitted in the phone/image subbands. So, what the opponents are asking is: (1) that digital data not be permitted to occur in the data subbands, which have existed for many years; and (2) that instead, it be permitted only in the bands in which it has never been permitted in the past and is not permitted now. The "assurances" that they want that there will be no interaction between digital data at bandwidths up to 2.8 kilohertz and CW operations cannot be given. No such "assurances" can exist in shared HF spectrum. But we can do what is possible, which is to plan the use of the HF bands informally to minimize any interaction between data stations and CW and PSK-31 operations. Retaining an archaic symbol rate limitation in order to keep the overall amount of digital experimentation down is artificial and completely unreasonable.

We have plenty of time to do this. Bill Cross at FCC tells me that WTB is not scheduling any action on this petition anytime soon, because there is nothing else in the way of Part 97 rule changes on file now and they can't "batch" this petition in with others in an omnibus NPRM. So there is no action on this coming up anytime soon.

We have provided a series of comprehensive explanations of our position and our reasoning process, and yet there are still misunderstandings and misapprehensions about the petition reflected in filings and in communications from people that we like and respect and people who like and respect ARRL. There is really no alternative now but to stay the course, but it may be time to try yet again to explain what the petition does NOT do. If we do that though, we must be careful to avoid appearing pedantic or condescending, because our message on this petition thus far has not been received well, quite obviously.

2. WT Dockets 12-283 and 09-209; RM-11625 and RM-11629; Amendment of the Amateur Service Rules Governing Qualifying Examination Systems and Other Matters; Amateur Use of Narrowband TDMA Part 90 equipment in the Amateur Service; Examination Session Remote Proctoring (ARRL comments filed December 21, 2012; second temporary waiver request for TDMA emission granted).

This is another proceeding that is now resolved, and it is one that should be placed, as the Baltimore Orioles radio announcer says, "in the Win column". On March 19, Dave Sumner and I met by appointment with Roger Sherman, the new Wireless Telecommunications Bureau chief. Also present at this meeting were Roger Noel, Chief of the Mobility Division (who has been at FCC for many years, but we don't have a lot of interaction with him); Bill Cross, and Scot Stone. We had a list of items to discuss with them, but we spent most of the 35 minutes we had to principally talk about this docket. That is because we had received input that Cross and Stone had in mind reducing the number of VEs on a team from three to two, and that they were considering adopting the lifetime examination credit for completed exam elements.

We made a series of arguments based on a briefing paper and frankly, I think that, more than anything else, triggered a compromise in the FCC Order released June 10, 2014. In that Order, the FCC:

(a) amended the rules to grant credit for written examination Elements 3 and 4 for expired licenses that required passage of those elements, but it still requires all former licensees to pass Element 2 before they can be relicensed. This is in lieu of the original proposal to require that VEs give examination credit to an applicant who can demonstrate that he or she formerly held a particular class of license.

(b) declined to reduce the number of VEs who must administer an amateur operator license examination from three to two. The proposal to reduce the minimum number of VEs required to administer an examination was opposed by a clear majority of commenters, including numerous VEs and the largest VECs, who argued that the use of three VEs results in higher accuracy and lower fraud than would be the case with two VEs, and that errors and improprieties have been detected by three-member teams that might have gone undetected by a team of two. FCC said that, given VECs' and VEs' unique knowledge of the mechanics of administering amateur examinations, the comments were persuasive. The record indicated that a minimum of three VEs is appropriate to minimize fraud or abuse.

(c) allowed VEs and VECs the option of administering examination at locations remote from the VEs. While FCC declined to adopt specific rules applicable to remote testing or rules limiting where such testing should be permitted, it emphasized that the obligation under the rules for VECs and VEs to administer examinations responsibly applies in full to remote testing. In the event that remote administration compromises the examination process, VECs can decertify VEs and FCC can terminate its agreements with VECs who do not adequately control the process.

(d) allowed additional emission types to permanently permit TDMA emissions, such as those in Motorola's MotoTRBO product and its progeny.

Of course, the most important part of this is the retention of the 3-examiner requirement, and in general, all four of the components of this Order are consistent with ARRL's position in the docket. We should expand the use of oral advocacy in docket proceedings in which we have a substantial stake. Our strategies in this case seem to have worked quite well.

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

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. The FCC Report was prepared by a staff working group. It contains a list of proposed recommendations for "process reform" at the agency. The stated goal is for the FCC to operate in an effective, efficient and transparent way. It focuses on improving the overall functioning of the Agency and its service to the public. We interpreted this as an opportunity to notify FCC of the things that they do not do well now and to suggest how they might do better; presented in a professional and restrained manner.

FCC lists the following goals and the Report's proposed method of achieving them:

(a) Improving the efficiency and effectiveness of the FCC's decision-making process by streamlining the internal FCC review process, improving tracking accountability, and reducing backlogs;

(b) Processing items before the agency more quickly and more transparently by accelerating the overall speed of disposal of both routine and more complex matters, and ensuring the public is provided more information regarding the status of particular matters;

(c) Streamlining agency processes and data collections, including reworking essential processes such as licensing activities, internal distribution and release procedures, handling of informal consumer complaints, compliance with statutory requirements such as the Paperwork Reduction Act, and examining the FCC's data collection practices to lessen burdens where possible, while ensuring the agency's data collection practices are effectively tailored to evolving market conditions;

(d) Eliminating or streamlining outdated rules that are candidates for modification or elimination as a result of marketplace or technology changes that render the rules no longer necessary in the public interest;

(e) Improving interactions with external stakeholders by enhancing the FCC's public outreach and transparency, exploring innovative mechanisms for developing policy proposals, and updating the drafting process for policy documents;

(f) Maximizing the Commission's tools and resources by ensuring effective internal communications, human resource management, and training; and

(g) Modernizing the Commission's information technology infrastructure to improve its website functionality, data management, and tracking capability.

Many of these items seem to be the usual deregulatory/biennial review types of things rather than more meaningful regulatory reform, so we identified some very clear targets for our comments in this proceeding. Most of the comments focus on the effect of the Commission's constrictive policies on enforcement in the Amateur Service, but we also deal 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.

These comments are 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. We will be taking these comments with us when Riley Hollingsworth and I meet with the new FCC Enforcement Bureau Chief Travis LeBlanc this week.

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

There has been no action since FCC's March, 2012 report which contained no threats to Amateur Radio towers specifically.

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

There has been no activity on these items since prior to the last Board meeting.

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

In this docket proceeding, the FCC has proposed to subject the Amateur Service to a "general exemption" table for conducting a routine environmental review of a proposed new or modified station configuration relative to RF energy exposure of humans. We filed comments September 3, 2013.

This is another OET item. Until recently, FCC has categorically exempted Amateur stations from <u>routine</u> RF exposure evaluation. Now, 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.

Dave Sumner and I mentioned this proceeding to WTB's Roger Sherman in March, and he asked if we had met with Julie Knapp and his staff about this problem. We indicated that we had not done so as yet. It was a good suggestion, however, and we have planned a meeting for a permitted *ex parte* presentation with Knapp about this soon.

7. ET Docket No. 13-44, Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment; Amendment of Part 68 regarding Approval of Terminal Equipment by Telecommunications Certification Bodies

ARRL Reply Comments were filed in this proceeding on July 31, 2013. No action has been taken since.

In this NPRM released February 15, 2013, FCC proposed changes to its equipment authorization processes (Part 2 of the FCC Rules) in several respects. Among other things, it addresses the role of Telecommunication Certification Bodies (TCBs) in certifying RF equipment and post-market surveillance, as well as the Commission's role in assessing TCB performance.

This is not a docket proceeding that *directly* affects the Amateur Service. However, the track record for TCB certification of RF devices in terms of errors and ill-advised grants of certification is abysmal. FCC lab staff constantly has to review and set aside TCB grants of

certification for RF equipment, often after large numbers of devices have been sold and deployed in the United States. The best example of the inadequate performance of TCBs in recent memory is with respect to a TCB grant of the ReconRobotics Recon Scout device.

On the other hand, we don't want small manufacturers of small quantities of Amateur Radio equipment to be burdened by the very high cost of the FCC's equipment authorization process. An example of the latter is a small manufacturer of Amateur equipment that incorporates a scanning receiver. Those receivers have to be certified according to FCC rules. This involves a private laboratory and a TCB certification, which is expensive and which deters and delays manufacturing of RF equipment in small quantities for, as an example, the Amateur market. We have an interest in ensuring that certain types of equipment intended exclusively for Amateur Radio use is available and at a reasonable cost.

FCC proposed that the Commission no longer conduct evaluations for initially approving RF equipment requiring certification. Instead, TCBs would approve *all* such equipment in the first instance, including equipment on an "exclusion list" that now, only the Commission may approve. Equipment on the exclusion list includes MedRadio transmitters designed to operate in 413-419 MHz, 426-432 MHz, 438-444 MHz, 451-457, and 2360-2400 MHz bands (Part 95 Subpart I). We want the Commission, and not TCBs, to continue to certify these devices.

The Executive Committee decided to file comments in this proceeding emphasizing the poor record of some TCBs and the need for continued oversight by the FCC lab. As it turned out, we filed reply comments on July 31, 2013, replying in support of the comments of the National Association of Broadcasters, whose comments were consistent with and complimentary to ARRL's position in this proceeding. ARRL noted that the track record for TCB certification of RF devices in terms of errors and ill-advised grants of certification is less than exemplary in several instances, resulting in several instances in which the FCC laboratory staff had to review and set aside TCB grants of RF equipment. The NPRM does not include any reference to how many TCB grants have been reviewed by the Commission, and what percentage of those is set aside by the Commission or returned to the TCB for further review. We said that before delegating further authority to TCBs for certification, FCC should inform the public of the level of accuracy and reliability that it has found in reviewing TCB applications.

We also said that the TCB certification process is not transparent at all - but it should be. The public is not informed about TCB equipment authorization grants until after the fact, at which time an equipment manufacturer may have already sold large numbers of a non-conforming product if a TCB made an error in the grant. The Commission has no practical ability to retrieve large numbers of units of non-conforming devices which may have been TCB certified in error, once they are sold at retail. Nor has the Commission's laboratory demonstrated the capacity to quickly review and evaluate complaints lodged about errors in TCB certification grants, even if an interested party was somehow able to discover the TCB's error on a timely basis.

II. Antenna and RFI Cases.

1. Myles Landstein, N2EHG, LaGrangeville, NY. We have heard very little from Myles Landstein or his attorney, Jon Adams, relative to their pursuit (administratively and/or judicially) of Landstein's entitlement to reasonable accommodation of his Amateur antenna system. The Town of LaGrange, NY has attempted to impose a cost prohibition. This case also offers the opportunity to challenge a very old New York State court case holding that Amateur Radio is not a normal accessory use to residential real property. The ARLDAC Committee has released the $10,000 funding grant to Adams' trust account and I expect an update, which I have requested but not yet received.

2. Howard Groveman, W6HDG, and Poway, CA. Howard wishes to erect a Tashjian LM-354e crank-up antenna support structure to a total system height of 59'. He lives in Poway, CA which has historically evidenced serious opposition to Amateur Radio antennas. Howard has been unable to file an application for a building permit and the City will not accept such an application from him. A variance could be applied for but the confusing antenna ordinance is now under review and is being renegotiated. The ARLDAC has provided funding for attorney's fees for the negotiation process for this new ordinance. Felix Tinkov, a land use lawyer well-known to us, is leading the charge for the hams of Poway.

III. Other Legal Matters.

There are two other substantive legal matters that I am constrained to bring to the Board's attention now. They are as follows:

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

Mobile cellular and mobile texting statutes and ordinances are rapidly becoming significant impediments to the ability of radio amateurs to operate mobile. The November, 2013 QST had a well-done editorial by Dave Sumner about Distracted Driving Legislation. Dave's Editorial cited the "Moving Ahead for Progress in the 21st Century Act" (MAP-21), Public Law 112-141 (2012). MAP-21 provides in part that in order to qualify for grant funds under a new Federal grant program to discourage distracted driving, a State must enact and enforce statutes prohibiting "texting through a personal wireless communications device while driving" and any use of such a device by a driver under the age of 18. States whose statutes don't include these provisions do not qualify for grant funds under the program. The definition of "personal wireless communications devices" is a device through which "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services" are transmitted. That definition is sufficient to exclude Amateur Radio from the prohibitions, but not all States use that definition by any means. In many cases of State legislation, we have in the past relied on exemptions from the texting law specifically identifying Amateur Radio as an exempt activity. You will notice that our policy statement attached includes references to exemption of Amateur Radio as an option.

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

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

Therefore, exempting Amateur Radio from State texting statutes is not possible if the State involved wants MAP-21 funds, and of course they all do. So the only option now in dealing with State legislation is to make sure that the definition of devices that cannot be operated while mobile is sufficiently clear that it does not include Amateur Radio *in the first place*. We are in the process of modifying our policy statement to reflect this change in Federal law. The Executive Committee in March considered a revision but found it inadequate and it is being rewritten now.

2. **State legislation re tower lighting and painting ("crop-duster" statutes, Idaho, Colorado and Washington State).**

This is a relatively new state legislative issue. States that have rural agricultural areas are concerned that short towers, those between 50 and 200 feet and not near airports, do not have to be lighted or painted. They are worried that low-flying aircraft (e.g. crop planters and crop dusters) will hit those towers. Most recently, Colorado House Bill 14-1216 passed the House of Delegates in Colorado and the Senate and it was signed by the Governor. This occurred despite the fact that we have a well-positioned SGL in Colorado who is close to the Senator that sponsored the Bill there. There was no exemption for Amateur Radio antennas in that Bill as it was enacted. The new statute would provide regulatory limits on towers, defined as follows:

> "Tower" means a structure that is either self-standing or supported by guy wires and ground anchors, is smaller than six feet in diameter at the base, and has accessory facilities on which an antenna, sensor, camera, meteorological instrument, or other equipment is mounted. "Tower" does not include a structure that is located adjacent to a building, house, barn, or electric utility substation.

Among other requirements, the statute includes the following:

> Where the appearance of a tower is not otherwise governed by state or federal law, rule, or regulation, any tower over fifty feet in height that is located outside the boundaries of an incorporated city or town on land that is primarily rural or undeveloped or used for agricultural purposes must be marked and painted or otherwise constructed to be visible in clear air during daylight hours from a distance of not less than two thousand feet.

The Colorado General Assembly said that the basic premise for the Bill was that "Towers under 200 feet in height are not currently regulated by the federal aviation administration and, consequently, may not have certain markings that are required for taller towers." ***That a false***

premise. Towers under 200 feet in height ARE regulated by FAA (and notification to FAA is called for by the FCC) if a tower less than 200 feet is to be located in an area that FAA has determined constitutes a danger to air navigation: that is, where the towers are located within the glide slope of an airport or heliport. See, 47 C.F.R. 17.7. The glide slope is 100-to-1 for a horizontal distance of 6.10 kilometers from the nearest point of a runway of an airport or heliport, and less for towers closer to the airport or heliport. The point is that FAA has in fact exercised its preemptive, comprehensive Federal jurisdiction to protect air traffic as necessary in a reasonable exercise of its discretion. The comprehensive regulation of tower height, marking and lighting by FAA (in conjunction with FCC) includes a scheme of painting and lighting that leaves no room for the States to supplement it.

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

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

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

There are two other states that have dealt with this issue so far: Washington State and Idaho. Washington State has a statute which specifically exempts, among other towers, Amateur Radio antennas and support structures. The Washington State exemption applies to: “Any structure for which the primary purpose is to support telecommunications equipment, such as equipment for amateur radio and broadcast radio and television services regulated by the federal communications commission…”

The State of Idaho did, in 2013, pass legislation (Senate Bill 1065) that amended a prior statute regulating short towers in order to exempt Amateur Radio antennas therefrom. The definition of towers subject to the State regulation on its face is similar to that in the Colorado Bill, and it arguably exempts Amateur towers:

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

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

In any case, Idaho and Washington specifically exempt Amateur Radio antennas from their short tower statutes. The Colorado statute as of today does NOT do this though we understand that an exemption is pending there. The Idaho exemption reads as follows:

“This section shall not apply to power poles or structures owned and operated by an electric supplier as defined in section 61-332A(4), Idaho Code, or any structure the primary purpose of which is to support telecommunications equipment, including citizens band (CB) radio towers and all other (sic) amateur radio towers.”

These three states are not the universe of this type of legislation and we must be vigilant about it.

I will be pleased to address any questions you may have about this report before or during the Board meeting. It remains a great privilege for me to serve the Board of Directors.

Respectfully submitted,

Christopher D. Imlay

Christopher D. Imlay
General Counsel

APPENDIX A
(REPORT OF DIRECTOR LISENCO TO THE BOARD OF DIRECTORS)

Report to the Board
Grassroots Activity and HR 4969
Mike Lisenco, N2YBB

At the July 2013 Board meeting, I was asked by President Craigie to start a pilot program which would use the local resources in the Hudson Division to seek an original sponsor for legislation that would extend PRB-1 protection to those hams living in private developments with Covenants, Conditions, and Restrictions (CC&Rs). The emphasis of the bill the ARRL had drafted at that time would be toward the Emergency Communications aspect of Amateur Radio.

At first, we were looking for "key legislators," that is, representatives who were either members of the House Communications and Technology Sub-Committee or the House Energy & Commerce Committee, the parent committee. In looking for an entrée to any one of a number of House members in my Division, I was able to develop a team of local hams in the 20th Congressional District and got an appointment with the District Director in Rep. Paul Tonko's (D-NY) office.

Rep. Tonko, who represents many hams in the Albany and Schenectady area, is a member of the House Commerce Committee and quite familiar with Amateur Radio's role in providing communications support during the major flooding that occurred in his district after Hurricane Irene and Superstorm Sandy. I looked for, and found, some local hams who were politically connected and the leadership of ARES/RACES, and we approached his office for an appointment, which occurred in November 2013.

Concurrently, Chris Imlay had discussions with Rep. Walden's (R-CO) office and with Mr. Kinzinger's (R-IL) office regarding the proposed bill, which had been unable to get a primary sponsor. Mr. Kinzinger's Legislative Director is a ham and both he and Mr. Walden's Chief Counsel agreed that the focus of the bill should move away solely from EmComm and make it a parity issue so that all hams are able to operate equally under the premise that it is within the Federal interest to protect Amateur Radio.

It is now the end of November 2013. We were asked to not do anything until after January 1st 2014 to allow for the redrafting of the Bill and for a list of possible Democratic cosponsors to make the bill bi-partisan.

After January 1st, we were still waiting for the revised draft. I contacted Mr. Tonko's office and was told that they wouldn't be the primary sponsor, but would gladly cosponsor the bill when it dropped, and to send them a copy for review when it did drop. (That was done on July 2nd.)

Now it was a waiting game, as we weren't getting any approvals from the list that Mr. Kinzinger generated of 'acceptable' primary cosponsors. We were turned down by his initial choice after months of waiting for word. We came up with other Democrats on the Telecomm sub-committee, but they were not acceptable.

This back and forth delayed the issuance of the Bill for many more months. It wasn't until Dave Sumner approached Rep. Courtney (D-CT) to be a primary cosponsor. Mr. Courtney was acceptable to Mr. Kinzinger's team. He agreed, and the Bill, after bouncing back and forth for nearly 7 months, was finally introduced.

President Craigie sent me to meet with Chris Imlay and The Keelen Group, and spend the day walking the halls of Congress advocating for the co-sponsorship of H.R. 4969 with Congressional staffers in my Division. The timing was fortuitous as I arrived the same day the Bill dropped. The plan was to lobby (with The Keelen Group and Chris Imlay) six of the Hudson Division's representatives. Our first meeting was with Rep. Lance (R-NJ) and his legislative assistant. The meeting went extremely well, he was very receptive, and he said that he was close to Mr. Kinzinger. He is also a member of the Telecomm subcommittee, so his support is crucial. The meeting lasted about half an hour (a very long meeting) and ended with us chatting about the Brooklyn Dodgers.

Of the five other offices we visited, we received very positive results, including at least one commitment and four probably responses (including that of Rep. Israel's Legislative Aide who told us that Rep. Israel had recently asked him to draft something similar – he has long been a friend of Amateur Radio). Visits to various offices continued with members of TKG and Chris Imlay the next week. Results of those visits remain to be seen.

Some issues to consider.

We weren't/aren't prepared to take advantage of the dropping of the Bill. At the January Board meeting, Matt Keelen talked about branding and grass-root political activity. To date, nothing has been done in either area. Had some training been made available to the Board, and planning in anticipation of the successful dropping of the Bill occurred in the intervening months, we would most likely already have the 30 cosponsors we're looking for.

When I had an opportunity to express my dismay at this situation to Frank McCarthy of TKG, he informed me that a proposal went to the League in February. Sadly, it appears to have fallen between the cracks. Having said that, we need to get on top of the situation and make the time to speak to our representatives in their districts this August, while they are on vacation from D.C. Using the Bill, one page handout, and the bullet point talking sheet, we should be able to do what's needed to obtain enough cosponsors so that Mr. Walden can make his push. This is simply a numbers game, and the more we get the stronger position Mr. Walden is in.

To this end, I've prepared some thoughts on grassroots activity and a template for using to have your members email their Representatives in support of HR 4969. This is attached.

There are independent petitions circulating that we have absolutely no control over. Quite frankly, they have the potential for doing more harm than good as some comments deal with towers. We will never get sponsors if towers are legislated in the mix. The Bill is straightforward and grants to CC&Rs the same rights that hams who are governed by local ordinance have. This fight is for another day AFTER we get PRB-1 extended.

Some members of the Board have expressed the opinion that they are afraid that the FCC will legislate PRB-1 away by ruling that all anyone needs is a simple wire antenna. I don't see that happening, especially given that Mr. Walden is advocating on our behalf to his own man in the FCC. I believe that if can convince the FCC to do his bidding, we will not have that as a problem, and there may be tower cases down the pike in private developments just as there have been with zoning boards.

Some have also expressed the question, "why now?" Simply put, we have an opportunity NOW that we have NEVER had, and if we don't capitalize on it, we might not see this same opportunity again in our lifetime. Mr. Walden will not be Chairman Walden forever, his party will not be in the majority forever, the offer stands now, and we need to strike while the proverbial iron is hot. Bottom line – it's now or never!

Another issue to consider. With all due respect to TKG, in my opinion they need to have a ham with them when they hold meetings regarding H.R. 4969. I believe that even as knowledgeable as they are, they cannot answer with certainty many of the ham radio related questions that arise. It would be preferable that they work completely in tandem with us. I realize this cannot always be the case, but it should be a goal.

Respectfully Submitted,

Mike Lisenco N2YBB
Director, Hudson Division

My mass email to the individual ARRL member mailing list by Congressional District. Please tailor your instructions to the membership accordingly. Also make changes to the name, gender, email link and amount of FCC licenses in their Congressional District BEFORE you send it out.

Feel free to make changes to suit your needs, or develop something different to email to your members if so desired.

This mailing can only be sent to ARRL members. You CANNOT solicit non-members!!!!!

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Hello,

As you may know, we were able to get a Bill introduced in Congress that would extend PRB-1 rights to those hams living with CC&Rs prohibiting them from even a simple wire antenna. Please cut and paste the email, FIRST MAKING SURE THAT YOU ADD YOUR NAME TO THE SIGNATURE below and send it to the Congresswoman using the Congressional email link at:

https://lowey.house.gov/contact-form

Put your zip code in the dialogue box, hit submit, follow to the next page. Fill in the boxes and paste the letter in the "Message" box. When it asks for the issue you're writing about, use "telecommunications" or "communications" or something close to that.

In the Subject box, please put "Please cosponsor H.R. 4969"

If by chance you know her personally, or any of her staff, please contact me immediately.

Tnx es 73 de Mike N2YBB

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Dear Congresswoman Lowey,

I am a constituent in your District and I want to bring an issue to your attention. I am a federally licensed Amateur Radio operator, one of over 1,100 whom reside in your District. We provide communications support and participate in public service events on behalf of the community, during times of emergency by providing communications for local governmental agencies and non-governmental agencies (NGO) like the Red Cross and Salvation Army, communications support to the United States Military through their Military Auxiliary Radio System (MARS), to our neighbors when mainstream communications break down, and to the future of telecommunications as we participate in the development of cutting edge technology in this digital age.

We cannot do any of these things, which we do at no charge ever to anyone we help, without being able to place an outdoor antenna on our property.

Recently a bi-partisan Bill, H.R. 4969, was introduced by Mr. Kinzinger(R-IL) and Mr. Courtney (D-CT) which would extend the ability to properly negotiate with developments that have restrictions that routinely preclude Amateur Radio operators from putting up even a simple wire antenna in a tree that would never be seen by the community. We already have this ability with local zoning ordinances, but we need to extend this ability to operators living under land use restrictions. All we are asking for is a reasonable accommodation.

As your constituent, I am asking that you support the bill by signing-on as a cosponsor. Please contact Rep. Kinzinger's office to do so.

If you have any questions, please contact our Division Director, Mike Lisenco at n2ybb@arrl.org or 917-865-3538.

Thank you.

Sincerely,

H.R. 4969, The Amateur Radio Parity Act of 2014
ARRL, the national association for Amateur Radio
113th Congress, Second Session

►The American Radio Relay League, Incorporated (ARRL) is the representative of Amateur Radio in the United States. There are more than 720,000 Amateur Radio operators licensed by the FCC. ARRL's membership of approximately 170,000 includes the most active and dedicated Amateur Radio operators.

►Radio Amateurs (hams) provide, on a volunteer basis, public service, emergency, and disaster relief communications using radio stations located in their residences. Their services cost taxpayers nothing, and are provided are at no cost to any served agency or to any government entity. FEMA has stated that when Amateur Radio operators are needed in an emergency or disaster, they are really needed.

►Served agencies include the American Red Cross, the Salvation Army, the Federal Emergency Management Agency, and the Department of Defense. Disaster relief planning exercises and emergency communications certification courses guarantee trained operators throughout the United States.

►The largest threat to Amateur Radio emergency and public service communications (which is escalating quickly and exponentially) is land use restrictions that prohibit the installation of outdoor antenna systems. An outdoor antenna is critical to the efficiency of an Amateur Radio station. Even an unobtrusive, largely invisible length of wire in a tree or under the eave of a roof are routinely prohibited in residential areas by private land use regulations.

►Twenty-nine years ago, the FCC found that there was a "strong Federal interest" in supporting effective Amateur Radio communications, and that zoning ordinances often unreasonably restricted Amateur Radio antennas in residential areas. The FCC created a three-part test for municipal regulations affecting Amateur Radio antennas. State or local land use regulations: (A) cannot preclude Amateur Radio communications; (B) must make "reasonable accommodation" for Amateur Radio communications; and
(C) must constitute the "minimum practicable restriction" in order to accomplish a legitimate municipal purpose.

►The FCC did not extend this policy to private land use regulations at the time, and has declined to do so saying that deed restrictions, covenants and homeowner's association regulations were private agreements that did not normally concern the FCC. However, the Telecommunications Act of 1996 ordered the FCC to enact regulations that preempted municipal and private land use regulation over small satellite dish antennas and television broadcast antennas in residences. The FCC acknowledged that it does have jurisdiction to preempt private land use regulations that conflict with Federal policy.

►Upon ARRL's repeated requests to FCC to revisit its decision and to apply policy equally to all types of land use regulations which unreasonably restrict or preclude volunteer, public service communications, FCC said that it would do so upon receiving some guidance from Congress in this area.

►Pursuant to the *Middle Class Tax Relief and Job Creation Act of 2012,* the FCC conducted a study on "the uses and capabilities of Amateur Radio Service communications in emergencies and disaster relief" and submitted to the House and Senate a Report on the findings of such study. The docket proceeding created an impressive record demonstrating the severe and pervasive impact of private land use regulations on Amateur Radio emergency communications. The record in the docket proceeding justifies the even application of FCC's balanced, limited preemption policy to all types of land use regulation of Amateur Radio antennas. The FCC said, in effect, that should Congress instruct FCC to do so, it would expeditiously extend the policy.

►Therefore, we seek cosponsors for H.R. 4969, a Bill that would provide for regulatory parity and uniformity in land use regulations as they pertain to Amateur Radio.

Some thoughts on organizing a “grassroots” effort for H.R. 4969.

We still have a couple of weeks left this month. It might pay for some of the Directors from the larger states (larger in Congressional membership) to come to D.C. to lobby their representatives. TKG could make appointments and we could just blanket the offices that we need to in a day or two. This should occur after the Convention and Board meeting.

The House of Representatives goes on hiatus next month. Except for the few visits that The Keelen Group is able to schedule for the remainder of July, the bulk of our work obtaining cosponsors for the Bill must accomplished in August, when they are home. This is the ideal time for you to develop small teams of constituents to approach them in their District offices.

Ideally, you’d want no more than three members to go to a meeting with a Congressman or their top staffers. What I’ve done in the past is send an email to my Division asking who, specifically, is politically involved in their community (preference going to those who happen to be of the same party of the Congressman/woman). These need to be active, articulate members who present themselves well.

Meeting strategy is important. The leader of the group needs to introduce everyone, explain where you’re from and why you’re there, and then start the topic of conversation. However, all parties need to participate in the conversation, even if a comment is just to underscore a point being made. DO NOT talk over each other. And carefully listen to any questions that may be asked.

If you don’t know an answer to a question, DO NOT MAKE ONE UP. Be honest, tell them you don’t know but that you will get an answer and get back to them as soon as possible.

You need an entrée to the office. Contact person would be the Representative, the Chief of Staff, the Legislative Director, or the District Director. If all we’ve got in an aide, so be it.

Take the bullet point one-sheet, the Bill, and 2 or 3 of the glossies in an ARRL folder WITH your business card. Business cards are a big thing in D.C. Make certain to bring them when going to either D.C. or the District office.

This isn’t rocket science, however, it does take planning and the ability to state your case succinctly in no more that 15 minutes. If they like you, or are truly interested, they may go longer. But be prepared for a short meeting and be happy with the 10-15 minutes you get.

Follow-up with a thank-you email within one day. Then a phone call a week later to see if there is any movement in supporting the Bill, particularly signing on as a cosponsor.

APPENDIX B
(ENFORCEMENT BUREAU BRIEFING MEMO)

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

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

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

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

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

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

► ARRL participates in and sponsors (in partnership with the Commission) the "Official Observer" or "Amateur Auxiliary" program: a legislatively authorized program that the Commission has implemented pursuant to a written agreement which provides for a large number of ARRL-appointed and trained volunteers to monitor Amateur frequencies for compliance issues and to provide that evidence to the Commission. In the case of minor infractions, informal notices (in the nature of helpful reminders) are sent by trained Official Observer stations ("OOs") [under the supervision of trained Official Observer Coordinators (OOCs) appointed by ARRL] to persons who have been heard to have unintentionally violated a minor rule. In serious or repeated rule violation cases, recordings of on-air communications of

the perpetrator are made by OOs and sent to ARRL and to EB staff, along with notations of times, frequencies and, if known, the likely location of a rule violator, determined by direction-finding techniques. The information gathered by OOs is not used directly as evidence by the Commission, but it does allow prediction of times and days a particular rule violator might be operating and patterns of rule violations, so that Commission staff can without wasting time focus their evidence-gathering effort for maximum efficiency. There is very little communication between the Commission's EB staff on the one hand and the OOs, OOCs and ARRL staff on the other. The program is underutilized and the work of the OOs normally goes unrecognized now.

► The underpinning of compliance in the Amateur Service is the *perception* of an active enforcement presence that creates deterrence and promotes compliance. This perception was present in the Amateur Radio enforcement program at FCC between 1998 and 2008, when the program worked exceptionally well. Compliance during those years was successful because of (1) the visibility in the Amateur Radio community of a single member of the Commission's Enforcement Bureau staff at Amateur Radio events; and (2) by making available to the Amateur Radio media everything that was done by that office and the publicizing of those actions, except where privacy rights would be violated or confidentiality had been requested.

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

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

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

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

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

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

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

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

► ARRL does not urge a significant increase in the dedication of resources to Amateur Radio enforcement. It does ask, however that the person charged with the task be released to the greatest extent possible from any unnecessary constraints placed on those efforts. ARRL and its volunteers should be permitted to assist to the greatest extent possible in order to improve and promote the level of deterrence that should exist in the Amateur Service and to reverse a disturbing downturn in compliance since about 2009. The visibility of the program must be increased in order to maximize the deterrence value of the work being done now.

► The Commission has failed to enforce its non-interference rules in the case of violations by electric utilities. ARRL has files of more than 1,000 power line RFI cases to which its staff has dedicated significant time and resources to cooperatively resolve. In ***none*** of these cases, some of which have dragged on for a decade or more, has the Commission issued a Notice of Apparent Liability or assessed a monetary forfeiture or other sanction.

► The concepts of visible enforcement and deterrence should be brought to bear in the area of power line interference cases in particular and Part 15 interference in general. The Bureau's processes are currently not publicized, and interference cases are effectively terminated without actual resolution of the underlying problem. Power line interference is a widespread problem not only for licensed Amateur Radio operators; it is also a major contributor to the economic woes of AM broadcast radio, because listeners will not suffer AM radio noise and have no idea what causes it or how to fix it. They simply utilize other media.

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

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