

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on March 12, 2008 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Rep. Arlen Siegfried
Rep. Jim Morrison
Don Whitney, Olathe
Steve Carriger, Topeka
Brian Short, Olathe
Tom Laux
Dee Smith & Michael Klein, The Salvation Army
JD Spradling
Bruce Cassida, Miami County
David Jacobs, Miami County

Others in attendance: See attached list

Chair requested staff to brief the committee on **HB 2805** - Establishing the Kansas Emergency Communications preservation act. Cindy Lash, Research analyst, said the bill would bring Kansas statutes into conformation with federal regulations regarding federally licensed amateur radio service communications and cited the various areas that would be affected.

Chair opened the hearing on

HB 2805 - Establishing the Kansas Emergency Communications preservation act

Proponents:

Rep. Arlen Siegfried spoke in favor of **HB 2805**. He felt amateur radio operators, or "ham operators", are the foundation of emergency communications in Kansas.

Rep. Jim Morrison, an amateur radio operator, voiced strong support for amateur radio service. He cited several occasions in the past year when this help was provided various Kansas communities in times of emergency. He noted this law would codify the federal law. He urged passage of **HB 2805**.

(Note: Eight of the following nine proponents are amateur radio operators with many years of experience.)

Don Whitney, Olathe, noted amateur radio operators volunteer in their local communities, assist in emergencies and are also a resource for Kansas homeland security preparedness. **HB 2805** simply codifies, at the state level, the FCC's PRB-1 regulation which already pre-empts state and local regulation that would adversely affect amateur radio service. Passage of **HB 2805** would help ensure that amateur radio operators will be available as a free, and vital resource to our communities in times of need. (Attachment 1)

Steve Carriger, Topeka, stated the communication provided by ham operators has taken on new meaning. Operators must train to ever higher standards, they work under the National Incident Command system and must learn to operate anywhere in the United States. (Attachment 2)

Brian Short, Olathe, provided background information on the amateur radio service. He especially stressed that this legislation costs the taxpayers of Kansas zero dollars. (Attachment 3)

Tom Laux communicates with friends in Germany and Italy in the morning and Australia and Japan in the evening. Operators must pass intensive examinations to qualify for a license issued by the Federal

CONTINUATION SHEET

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on March 12, 2008 in Room 526-S of the Capitol.

government. Hams are an exception as individuals who are not only engaged in their own communities, but nationally and globally as well. Passage of **HB 2805** would ensure a continued Emergency Communications System. ([Attachment 4](#))

Dee Smith, The Salvation Army, but not an amateur radio operator, stated the Salvation Army favors passage of **HB 2805** which asks the legislature to allow the FCC regulation PRB-1 to be passed into Kansas law. This legislation has been passed in 25 other states. ([Attachment 5](#))

Rod Richardson, Spring Hill, stressed that FCC Regulation PRB-1 and **HB 2805** do not preclude the ability of cities or counties to reasonably regulate antennas for legitimate safety or other concerns. He provided information on PRB-1, the FCC's Limited Preemption of Local Ordinances. ([Attachment 6](#))

JD Spradling, Kansas Certified Emergency Manager, stated we have come to a point in Kansas that we need standardized legislation that would enhance our communications capabilities. **HB 2805** assures Kansas state law reflects the federal rules regarding Amateur Radio Stations at no cost to the state or its citizens. ([Attachment 7](#))

Bruce Cassida, Miami County, favors **HB 2805** as it insures communication can be properly restored in the event of a disaster that disrupts our normal flow of life. ([Attachment 8](#))

David Jacobs, Miami County, urged passage of **HB 2805** to preserve the technical needs of the Ham operator to provide reliable emergency communications. ([Attachment 9](#))

Written testimony was provided by:

Bruce Frahm, Colby, Ks. ([Attachment 10](#))

Matt May, Merriam, Ks. ([Attachment 11](#))

Greg Hartnett, Louisburg, Ks. ([Attachment 12](#))

Opponent:

Written testimony was provided by:

Mark Tomb, League of Kansas Municipalities ([Attachment 13](#))

Questions to conferees concerning height of antennas and the federal regulations.

Chair closed the hearing on **HB 2805**.

Approval of Minutes

Moved by Senator Reitz, seconded by Senator Pine, the minutes of the meetings held in 2008 by the Senate Utilities Committee on February 19, February 20, March 5, March 6, and March 11 be approved. Motion carried.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 13

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: MARCH 12, 2008

Name	Representing
Karl Wenzel	Kearney & Assoc.
Don Whitney	
Steve Carriger	
Brian Short	
Tom Laux	
Dee Smith	
Rod Richardson	
JD Spradling	
Bruce Cassida	
Dore Jacobs	
Rep Jim Harrison	
Rep Arlen Siegfried	

TESTIMONY BEFORE THE UTILITES COMMITTEE
OF THE
KANSAS SENATE

HEARING ON HB 2805

MARCH 12, 2008

Mr. Chairman, and Ladies and Gentlemen of the Committee:

My name is Don Whitney. I am an amateur radio operator from Olathe. I am an attorney, and have been in private since 1987. I currently serve as Chairman of the Olathe Board Zoning Appeals. As a mission pilot for the Kansas Wing of the Civil Air Patrol, I also volunteer for emergency services, homeland security and disaster relief missions. I am also legal officer to my local Civil Air Patrol Squadron. Today I speak as a private citizen who volunteers for my service to my state and community.

I support the passage of HB 2805.

Amateur radio operators play a helpful role with community emergency services. Most of us ways to use our federally licensed privileges to volunteering in our local communities. Operators help with civic events, but more importantly, storm spotting, and when needed, responding to disasters. We do this as unpaid volunteers to multiply the effectiveness of our public emergency services personnel.

Recent natural disasters had a serious impact on Kansas communities: the western Kansas blizzard, the Greensburg tornado, and the flooding in southeastern Kansas. Those kinds of disasters often interrupt the infrastructure needed for traditional telephone and cellular communications.

Greensburg is a good example, where normal communications were down for an extended period of time. Long distance two-way radio was the only effective connection with the outside world. Teams of amateur radio operators arrived to pass along messages about the health and welfare of victims, and medical and food supplies needed.

Amateur radio service is also a resource for Kansas homeland security preparedness. If a mass disaster disrupts public utilities and communications, amateur radio service presents an extensive network independent of those systems. Amateur radio provides direct radio-to-radio contact over long distances *without any established infrastructure*. It requires no land lines, no relay towers, no switching stations, no power lines. It has lots of operators at lots of locations, connected only by the airwaves. It is one of the more survivable communications networks in existence. It is also a *highly efficient* means of exchanging vital information in a disaster between affected communities and unaffected communities. As opposed to telephone or cellular calls that reach only one person at a time, radio communications can contact many people all at once.

What's needed to make this work? Of course, we need to have radio equipment and personal on the ground at a disaster site. Sometimes this means portable stations, emergency station set ups, mobile command vehicles, (like used in Greenburg) all provided by volunteers, free of charge to the state and local governments. But we also need amateur stations and operators at their permanent home locations, including those who are in communities not affected by the disaster. They are often the most needed link to send, receive and replay messages, with the on-site personnel. Those stations need to have reliable, effective equipment, including antennas. Without effective antennas, amateur radio stations of course cannot operate effectively.

Local governments have imposed a variety of regulations and restrictions on outdoor antennas and towers, especially in response to the proliferation of cellular systems. Some of these restrictions are reasonable and still accommodate the effective functioning of amateur radio stations. Others do not, sometimes unintentionally creating an adverse and unnecessary impact on amateur radio services.

Why do we need HB 2805? The Federal Communications Act and the FCC's PRB-1 regulation already pre-empt state and local regulation that would adversely affect amateur radio service. The federal law does this merely by mandating that, in exercising their traditional role of regulating land use, municipalities reasonably accommodate amateur radio services. Although the federal law is pre-emptive, municipal authorities are often more cognizant of state enabling legislation and other governing state statutes. HB 2805 simply codifies, at a state level, that federal mandate. Passage of HB 2805 will help emphasize to Kansas municipalities the importance of preserving the resource of amateur radio volunteers. At the same time, the bill will not unreasonably hinder our municipalities from fashioning appropriate land use regulation.

I encourage this Committee's favorable action to recommend passage of the Kansas Emergency Communications Preservation Act, to help ensure that amateur radio operators will be available as a free, and vital resource to our communities in times when they are needed most.

Respectfully Submitted,

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Utilities Committee

HB 2805

I would like to thank the chairman and committee for allowing me to speak. My name is Steve Carriger and live here in Topeka / Shawnee county. I have been an Amateur Radio Operator for 40 years. During those 40 years I have been involved with emergency communications for over 35 years. I now serve as the Emergency Coordinator for Shawnee County and Wabaunsee County under Amateur Radio Emergency Service.(ARES) I have been to tornados, floods, law enforcement operations, fire operations, ice storms, you name it myself and other Amateur Radio Operators have responded.

Since the 9/11 Trade tower disaster, things have changed a lot. All organizations realized the short comings of equipment and training. We as Amateur Radio Operators have always been involved in disaster communications over the years. The communications we provide have now taken on new meaning. We must train to ever higher standards, we must learn to work under the National Incident Commands system, we must learn to operate anywhere in the United States.

The importance of allowing Amateur Radio Operators a unified standard such as HB2805 gives us a chance to provide these communications during disasters wither they occur in a local setting or somewhere else in the United States.

The group of Amateur Radio Operators I oversee has 52 people on call 24 hours a day 7 days a week. Last year we logged 4,800 hours training and response. We responded 7 times during the year to floods, ice, phone loss, law enforcement, and fire. Without towers around the county we could not provide this service.

Steve W. Carriger
Emergency Coordinator
Amateur Radio Emergency Service
Shawnee / Wabaunsee counties Kansas

03/09/08

Kansas Senate Testimony

Brian Short, KC0BS
12170 S Prairie Creek Pkwy
Olathe, KS 66061
913-638-7373

Thank you for allowing me to speak to you today.

I am a ham radio operator. My father was a ham radio operator, my brother is a ham, and all 3 of my nephews and my niece are hams. I volunteer more than one thousand hours each year to serving the community via ham radio. I am the Emergency Coordinator for Johnson County Amateur Radio Emergency Services, the president of three amateur radio clubs with members throughout the state, and I am the vice president of the ham radio coordination council for the 9 counties of the KC metro. Outside my work, I spend more time being a ham radio volunteer than anything else I do. I have worked with a ham colleague, Matt May-KC4WCG over the last 16 months to help 183 public safety professionals including emergency managers, dispatchers, police & sheriffs officers, EMTs, doctors, nurses and first responders from all types of agencies obtain their ham license. The class is a huge success, and has been published in a national magazine as a success story for others to emulate. We started the class because the students of this class are the folks that make up the emergency response community, and now they have the ability to talk across the country and world in times of disaster, and every day. They also learn how to use the ham radio resources in their community effectively. Let me share with you what we teach about hams as disaster resources in our class.

1. What is a ham?
 - a. The Amateur Radio Service is administered by the FCC for the specific purpose of providing **a voluntary noncommercial communications service to the public, particularly in times of emergency**
 - b. Ham's use radio techniques that are reliable, and infrastructure independent. This means Ham radio works when all other systems fail.

2. How large a resource is Ham radio in Kansas?
 - a. How many hams are there in Kansas? 7335
 - b. How many volunteer firefighters? According to FEMA there were 6882 volunteer firefighters on the roles in KS in 2007.
 - c. Throughout Kansas hams actively serve hospitals, county emergency managers, sheriff's departments, school districts, the Salvation Army, the Red Cross, and countless others.

3. Why do hams need this legislation?
 - a. Firefighters need lights & sirens to be able to serve their communities effectively. In 1978 you passed a law to help Volunteer firefighters serve their communities by allowing them to receive authorization to use lights & sirens, just like their paid counter parts. You saved lives with that law.
 - b. Today we have the chance to work together to save some more lives.
 - c. Hams need antennas to serve our communities effectively. The reason hams can operate without infrastructure is that we use specialized antenna structures that allow us to talk directly all over the world.

4. Why do hams need antennas at their homes?
 - a. Hams provide a SELF-HEALING network.
 - i. Self healing networks need MANY redundant stations, so if one or 2 or half are gone, the network still works. That is the glory of Ham radio. That is also the reason we need your help to allow us to keep our network strong by having a large number of amateur stations installed throughout the state that our emergency managers can use at a moments notice.
5. We train every day
 - a. How much would it cost to train your volunteer Firefighters everyday?
 - i. Not feasible, plus, they wouldn't be able to keep their day job!
 - b. Hams LIKE to use the radio, this means they are practicing their skills daily under a many different circumstances (walking, mobile, at home) under a variety of propagation conditions (the distance you can communicate changes throughout the day).
 - i. It also means they know how best to talk to different parts of the country (or world) at what time of day...INNATELY. getting signals through is a REFLEX action for hams.
6. What cities currently have restrictions:
 - a. Examples
7. How important is it?
 - a. In Leavenworth, Douglas, Johnson & Wyandotte County all the hospitals use ham radio as their emergency communications backup.
 - b. Ham radio is permanently installed and used at:
 - i. Olathe Fire Departmental Operations Center.
 - ii. Shawnee, Wyandotte, Leavenworth, Miami, Bourbon & Johnson County Emergency Management
 - iii. ECC (Fire & EMS Dispatch Center)
 - iv. Johnson County Sheriff Dispatch Center
 - c. Coming soon to:
 - i. Overland Park PD Dispatch
 - ii. Overland Park Command & Control Center
 - d. All of these groups rely on the fact that hams will assist them in times of disaster. The only way hams can provide that service, is if they have the antennas they need to get the message through.
8. How much does it cost? This legislation costs Kansas Taxpayers \$0 and ensures the thousands of volunteer man-hours that hams are already providing continue to serve as the most effective disaster communications network available.
9. Thank you for hearing my comments today. I will answer any questions.

**SENATE UTILITIES COMMITTEE
HB 2805**

Ladies and Gentlemen of the committee: Allow me to introduce myself my name is Tom Laux. To quite a number of people throughout the world I am known as Norway Zero America Germany, the phonetic expression of my amateur radio call sign... NOAG. At certain times during the eleven-year solar cycle I literally talk to friends in Italy or Germany in the morning and other friends in Australia and Japan in the evening.

Amateur radio operators, commonly referred to as "HAMS", are unlike other hobbyists. We are unique. You see, we are involved with magic! With the theoretical elements in mind amateurs began experimenting with radio waves along side of men named Tesla, Faraday, Marconi, and Edison. Our "hobby" is so special, indeed considered so important that we must be licensed by the Federal Government. We must pass intensive examinations to qualify for that license. With that license come special responsibilities that other avocations simply don't have. The Federal Communications Commission refers to Ham radio as the Amateur Radio Service.

The radio spectrum that amateur radio has been granted comes with an obligation, an obligation to learn and an obligation that has been ongoing since the discovery of radio communications; service to the community. Originally the high frequencies allocated to the amateur radio service were considered to be worthless. Today the VHF and UHF frequencies (also once thought to be worthless) are the workhorses of metropolitan communications. Repeaters (radios that re-broadcast a received signal) on top of buildings or on towers allow Hams to communicate from one end of the county to the other. Hams are experimenting with the edge of the radio spectrum right now to facilitate tomorrows microwave communication.

In terms of communication, the average citizen today relies on their personal cellular telephone for daily communication, and naively believes it will be available even in times of emergency. The fact of the matter, perhaps an unpleasant fact is that in emergencies your cell phone won't work. As the victims of the Greensburg, KS tornado, Hurricane Katrina, and countless other disasters will attest in such a catastrophe NOTHING works! Your cell phone won't work because the cellular systems become overloaded; it is inherent in the system. In a disaster such as the horrific tornado's of 2007 the communication infrastructure is destroyed, in the case of Greensburg it was simply gone.

Amateur radio has always been involved in emergency communications, partly because we can. Today a radio smaller than a cigar box installed in a vehicle can communicate with others over a large area. An amateur radio base station armed with the proper antenna can communicate literally throughout the world. However without this legislation, this may not always be the case should local governments choose not to "reasonably accommodate" residential amateur radio station installations in accordance with FCC guidelines. By supporting this legislation and formally codifying the FCC's 1985 PRB-1 ruling in Kansas state statute, you will ensure that this important safety net remains intact while also preserving the personal freedoms of hundreds of your fellow Kansans.

As Senators you have an unusual opportunity. The monetary cost of this bill to the taxpayers of Kansas is zero. That is correct; "The Kansas Emergency Communications Preservation Act" costs the state of Kansas nothing. The costs are borne by the amateur's themselves. The passage of HB 2805 will ensure that emergency communications in Kansas will be able to function at optimal levels. At the same time the bill does not give Kansas amateurs

privileges that are not already supported by FCC regulations. This bill does not preempt neighborhood covenants and deed restrictions (CCR's) nor does it attempt to circumvent homeowner association rules (HOA's). When was the last time legislation was proposed that cost so little and provided so much? Please provide Kansas taxpayers a continued Emergency Communications System.

At a time when citizen engagement is low, HAMS are an exception as individuals who are not only engaged in their own communities, but nationally and globally as well. We become involved largely because it is who we are. We have an inherent desire to collaborate, exchange ideas and offer assistance in times of need. Hams feel a responsibility to their neighbors and community. We help people. Please, pass this legislation.

Please: **HELP US TO CONTINUE TO HELP YOU!**

Testimony for Senate Utilities Committee

By
Dee Smith
Emergency Disaster Services Director
and
A. Michael Klein, ACSW, LCSW
Divisional Government Relations Director

The Salvation Army

Thank you Mister Chairman and other members of the Senate Utilities Committee for this opportunity to present testimony in support of this important community legislation.

Currently, Counties & Cities have their own regulations that control the height of Amateur Radio Communication antenna towers.

This bill asks the legislature to allow the FCC regulation PRB-1 to be passed into Kansas law which has been passed in 25 other states.

The benefit in passing this legislation is to offer a State wide standard, increasing the distance Amateur Radio Operators can be heard in their communications during an emergency situation.

The Salvation Army utilized ham radio operator volunteers for emergency communications during the Greenberg tornado, the Osawatomie flood and other situations where normal communications were down. These volunteer communicators are operating radio equipment in their homes, vehicles and mobile communications centers at no cost to the state. The undue restrictions on antenna tower height by local authorities adversely affect their efforts. The Salvation Army favors the passing of this legislation in order to help FCC licensed ham radio operators to better participate in, and practice for these type of emergency operations without limits of city and county regulatory antenna structure limitations. This legislation does not effect any HOA or deeded land that prohibits or restricts antenna structures.

We have been there for the citizens of Kansas during disasters, so now we are asking you to be there for us so we can continue to be an effective Emergency Communication resource for our served agencies, one being the Salvation Army and the citizens of the great State of Kansas.

Senate Utilities Committee
March 12, 2008
Attachment 5-1



WALLACE
SAUNDERS
AUSTIN
BROWN
ENOCHS

CHARTERED
ATTORNEYS AT LAW

March 7, 2008

Kansas Senate
Senate Utilities Committee

Re: Please Support the Amateur Radio Community in Kansas by
Passing HB2805/Hearing Date 3-12-08 9:30 a.m.

Dear Senator:

I am specifically writing to request your support for HB2805 which was approved by the House 123-0.

Those Kansas citizens who have experienced the need for immediate effective emergency communications such as those who have been ravaged by tornados, floods, winter storms, etc. know the full value of having available immediate effective radio communications. Traditionally and going clear back to the communications acts passed in the 1930s, the amateur radio service has been recognized by the federal government as one of the first lines of necessity in emergency communication.

No one can be an amateur radio operator without passing a rigorous federal examination, and therefore this has always been an "elite" service of citizens throughout the nation and in fact the world. I say this as a member of the amateur radio community, having received my license back in 1963 when I was about 13 years old. It was a gift from my father to me and one that ultimately assisted in my decision to go to law school and practice law. Being able to talk to people and meet people all over the world is a great introduction to how to make friends and effectively communicate and at the same time help your community.

As an FCC licensed Ham, I know just how valuable the amateur service is in times of emergency. It is also a wonderful technical hobby that lets you be in contact with people all over the world as goodwill ambassadors for the State of Kansas and the United States.

Senate Utilities Committee
March 12, 2008
Attachment 6-1

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The ability to effectively, rapidly and efficiently communicate is essential. To be "effective", you have to be able to put an antenna in the air to a reasonable height. What is reasonable is directly determined by the electronic and engineering requirements for transmitting signals. Putting antennas and their supporting structures up to effective heights may run afoul of local zoning codes.

In 1985 the FCC (Private Radio Bureau) [PRB] adopted PRB-1. This is a grant to the amateur radio service of a limited federal preemption from the enforcement of such antenna prohibition/restrictions *to the extent* that the local rule would preclude effective communications for which the individual is licensed. It expressly DOES NOT pre-empt local authority on the height of towers. It does preclude unreasonable restriction.

PRB-1 is a limited preemption that affords limited protection from government regulations that could eliminate the ability to effectively communicate for the amateur service. The height above ground of a transmitting antenna is electronically critical to successful long range (over the horizon) or short range (line of sight) communication. If you can't get the antenna to a reasonable height, it may dramatically limit successful emergency or other communications.

I have reviewed HB2805 and PRB-1 (101FCC22952 (1985)). I would like you to do the same. Take a look at the web page at www.hamsforkansas.org for additional information. At present 25 states have adopted laws incorporating PRB-1 including Missouri and Oklahoma.

I am a zoning and land use attorney licensed in the State of Kansas and Missouri since 1974. As such, I know just how expensive it can be for the average citizen to have to hire land use attorneys in order to pursue special use permits or variances, much less sue to be able to have effective federally licensed communications in cities or counties that either prohibit or regulate antennas and their supporting structures to the point of prohibition. The formal adoption of PRB-1 by Kansas will discourage cities or counties from unduly restricting antenna heights for radio amateurs.

When emergencies hit, amateur radio operators always step forward at considerable personal risk either as tornado spotters or to provide emergency communication not only in Kansas but around the world. I am confident both the State and the nation recognize the value of the amateur radio service. Unfortunately, it is in the details where this service may become less effective. Those details generally relate to cities and counties that may adopt ordinances that so severely limit antennas that they are ineffective for communications purposes. If this happens the only way around these regulations may be to file an application for a special use permit or a variance. To the extent such applications would require paying significant fees or hiring land use lawyers at many hundreds of dollars per hour, it may become prohibitively expensive.

6-2

Kansas Senate
March 7, 2008
Page 3

Keep in mind that PRB-1 and HB2805 do not preclude the ability of cities or counties to reasonably regulate antennas for legitimate safety or other concerns, nor do either apply to deed or homes association restrictions. It would however preclude them from passing an ordinance or enforcing a rule to the extent that it would prohibit effective communications for the amateur radio service.

It is my opinion and experience that means allowing certain antennas up to 60 feet. Although higher is generally better, anything lower than 60 feet may be ineffective depending upon the frequency. I believe that the passage of this bill would be an official recommendation of the Kansas Amateur Radio Service and the importance of allowing it to effectively operate.

It should be noted that this is precisely the recommendation that was afforded under PRB-1 itself by the FCC, and which is now included in the laws of 25 states.

As a zoning and land use lawyer I have had to deal with cities and counties, either representing people in front of them or actually representing cities and counties in the State of Kansas and Missouri since 1974. I have considerable first hand knowledge of exactly how this works "in the field". If I can provide any further information I would be happy to do so either by e-mail, letter, or in person if that would be more helpful.

Thanks for your consideration.

Very truly yours,



Rod L. Richardson
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Spring Hill, KS 66083

(913) 752-5501
rlr@wsabe.com

RLR:sgb

Cc: J.D. Spradling—Chairman: c3smaxi@mokancomm.net

PRB-1

PRB-1, cited as "Amateur Radio Preemption, 101 FCC2d 952 (1985)," is a limited preemption of local zoning ordinances. It delineates three rules for local municipalities to follow in regulating antenna structures: (1) state and local regulations that operate to preclude amateur communications are in direct conflict with federal objectives and must be preempted; (2) local regulations that involve placement, screening or height of antennas based on health, safety or aesthetic considerations must be crafted to reasonably accommodate amateur communications; and (3) such local regulations must represent the minimum practicable regulation to accomplish the local authority's legitimate purpose. The heart of PRB-1 is codified in the FCC Rules [97.15(e)]. Of course, what is "reasonable" depends on the circumstances! For suggestions about what to do when you are faced with a restrictive ordinance, see "Interacting with Municipal Officials," below.

Local Zoning Ordinances

In the past, amateurs relied solely on their powers of persuasion when dealing with local officials. Conflicts between amateurs and local authorities over the antenna height, placement in the yard, number of antennas on a particular support structure (eg, a tower) and the like were common. In the absence of detailed federal regulations governing amateur antennas (except for those aspects discussed previously), municipal leaders often fill in the void and use their broad discretion in public health and safety matters to enact regulations that limit antennas and supporting structures. The people who write these regulations have a lot of other things on their mind, so these regulations seldom take into account your need for an antenna of certain dimensions and height to be effective (working the DXpeditions, running phone patches to the South Pole and so on), so conflicts arise.

The situation reached epidemic proportions in the early 1980s and amateurs who invested family savings in fighting local zoning, building codes and covenant restrictions in the courts around the country were losing because there was no clear statement of any federal interest in the matter by the FCC. The courts held that the FCC regulates radio, but because the FCC had issued no statement restraining the zoning power of cities and counties, the traditionally local interest in zoning regulations that protects the public generally superseded the interests of any individual amateur.

By October 1983, the ARRL Board of Directors reviewed the adverse court decisions and recognized that antenna restrictions would continue to be a major stumbling block unless a statement of federal preemption emerged from the FCC. On July 16, 1984, the League filed a formal request asking the FCC to issue a declaratory ruling that would declare void all local ordinances that preclude or significantly inhibit effective, reliable amateur communications. Hundreds of comments were filed when the FCC established a pleading cycle, labeled PRB-1 ("PRB" being the designation for the FCC's Private Radio Bureau, the bureau in the FCC's internal organization that handled Amateur Radio matters at that time. It has been replaced by the Wireless Telecommunications Bureau). Comments were filed by amateurs, zoning authorities and city planners.

September 19, 1985, was a red-letter day in the history of Amateur Radio, as the FCC issued its now-famous PRB-1 declaratory *Memorandum Opinion and Order*, which says, in pertinent part, that "state and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted."

May 31, 1989, marked another milestone when the Commission adopted the revised and reorganized Part 97. The new rules codify the essence of the PRB-1 ruling: ". . . State or local regulation of amateur antennas may not preclude, but must reasonably accommodate, such

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communications, and must constitute the minimum practicable regulation to accomplish the local authority's legitimate purpose. " [97.15(e)].

The specific holding of PRB-1 has been of extreme benefit to amateurs and, with a few exceptions, has encouraged open cooperation and dialogue between the communities seeking to regulate amateur antennas and amateurs. Now that important language of PRB-1 has been incorporated into the FCC rules, the federal interest and official FCC policy with respect to amateur communications can be more easily demonstrated to municipal officials who need to be educated by you and your fellow hams.

Interaction with Municipal Officials

Don't be intimidated by the thought of going to city hall for a permit. Virtually all ham radio operators who own the physical area necessary for the safe installation of a tower should be able to legally erect a tower of *some* size. Here are the steps to take to enhance your chances of getting as much tower as you wish:

Information Gathering

Because regulations pertaining to antennas and the way building and zoning departments (or the equivalent) process permits vary from city to city, the first and most important step is information gathering. This means a visit or a phone call to your local building/zoning department or the equivalent, to obtain a copy of the zoning ordinances. Don't settle for anything less than the *whole booklet* of regulations! If the clerk or secretary offers to photocopy for you only the pages that pertain to antennas, keep in mind the sections mentioned, and politely thank him or her. But then get the entire booklet (which normally costs between \$5 and \$15).

You should get the whole booklet because you need to know more than just the sections under which the town regulates antenna heights. You need to know what procedures to follow when you apply for a permit. You also need to know how to appeal an adverse decision if you don't get a favorable ruling from the building inspector (or the zoning enforcement officer, or the equivalent) on the first try. Furthermore, if you ever need to seek the advice of a lawyer, the first thing the attorney will need to see is the entire body of regulatory law affecting land-use regulations for the town. Therefore, obtain the entire book and study the regulations carefully.

Zoning Regs Defined

But what are zoning regulations, exactly? Zoning regulations are rules that establish the permitted uses and the minimum and maximum dimensional requirements of structures in established areas or "zones." Ninety-nine percent of the time, a ham will want to put up an antenna/tower at his home, which will be in a residential zone. Because the overwhelming number of jurisdictions hold Amateur Radio to be a normal, accessory (as opposed to primary) use of residential property, it is proper in a residential zone. Similarly, such edifices as swimming pools, tennis courts and tool sheds are considered accessory structures on residential property.

But in addition to use rules, zoning regulations also establish rules as to how *high* structures are permitted to be. You may find your proposed tower being held to the same height standards as other "buildings" or "structures" permitted in a residential zone. Read the definitions section near the beginning of the zoning rules. Sometimes the definition of "building" is broad enough to include a tower, or antennas may be defined specifically. If the regulations do *not* define antennas specifically, see if they mention "accessory structures." Read the definition to see if antennas are

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included in that definition. You may find a section that defines flagpoles, church steeples and similar structures in language that could easily apply to towers as well.

Your town may be concerned with building codes, which are standards relating to safety that have been agreed upon by engineers from the architectural, structural, civil and other engineering disciplines. Once the building inspector determines that your tower is proper and would not violate zoning regulations pertaining to use and dimensions, your construction must still be carried out in accordance with building codes. Fortunately, this is rarely a problem. Tower manufacturers provide detailed specifications and plans for proper installation in accordance with all building codes.

Meeting the Building Inspector

After you have had a chance to study the regulations, you can probably tell which rules apply to your installation. If the clerk or secretary pointed out certain sections, look at those sections first to see if you agree. The regulations, when read in the context of your proposed antenna installation, should be understandable. If the regulations are full of legal mumbo-jumbo, however, now is the time to consult a lawyer, such as an ARRL Volunteer Counsel. But if you feel confident about your level of understanding and have familiarized yourself enough to carry on an intelligent conversation about the regulations, make an appointment with the building inspector (or the appropriate city official). Be prepared to discuss the proposed location, height and purpose of your structure, and take along the basic engineering data provided by the tower manufacturer to satisfy building code concerns. Also, take along a rough drawing of your property that shows your boundary lines, the house and other buildings nearby, and the proposed location of the tower.

The building inspector, much like a police officer walking a beat, is the first interpreter of the law, in this case the zoning law. What he or she says will be the first indication of the steps you will have to take to get a permit for your installation. After you present your proposal, listen carefully to what the building inspector says. Building inspectors are often willing to be helpful and grant your permit, provided you follow the correct application procedures. For example, you may need to file a map of your property drawn to scale.

If the building inspector appears negative, pay attention nevertheless to what he has to say, even if his reasoning may be wrong. It is important to thoroughly understand the basis for his opinion. Do not go into the confrontation mode with the building inspector; keep your "grid current" low! Don't wave a copy of PRB-1 or Part 97 in his face and "command" him to give you the permit because of federal law. He's not going to know what you're talking about, nor is he likely to make a snap decision in your favor that might get him into hot water later. If you are going to talk legal issues, moreover, he's going to want his lawyer (the town attorney) in on it.

In many situations, the building inspector will have the authority to grant a building permit or other approvals without the involvement of any of the higher-ups. This is why it's important to maintain a good relationship with him if possible.

Sometimes (especially if you're lucky), zoning ordinances specifically exempt antennas from the height restrictions of other structures. Depending on how your town's ordinances are written, it may be necessary for you to seek the permission of a zoning commissioner or land-use board. Usually this means that the zoning regulations are set up to allow antennas to a certain height limit without the need of a hearing, but if you want to exceed the "usual" height threshold, you need to apply for a special permit. This means that the drafters of the zoning ordinances decided that certain uses of structures could only be permitted after a public hearing and demonstration of special need.

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While this undoubtedly means more red tape and delay if you find yourself in this situation, such a requirement is not illegal in the eyes of the law (including PRB-1). It does provide a forum for potential opposition from neighbors, however, and preparation for the hearing is all-important.

If there is a problem, it will be one of two varieties: It may be a matter of interpretation of the ordinance by the building inspector, or the ordinance may be written in such a way that he is unable to reasonably come up with any other interpretation. If the ordinance is prohibitive under any reasonable interpretation, you should immediately seek the advice of a lawyer.

If the problem is that you disagree with the building inspector's interpretation of the zoning regulations, that's not as serious. While you may ultimately need a lawyer to resolve the issue, you can still carry the issue further yourself. Tell the building inspector in a *nonconfrontational* manner that you have a different interpretation and ask him for his comments. See if you can narrow it down as to where the problem lies. If it is a problem with the way the ordinance is written, eg, under no possible interpretation can you get your permit, that is a more serious problem. It may mean that the ordinance is illegal, and therefore invalid. The town officials won't like that and are more apt to fight vigorously against having their ordinance invalidated. They would rather change an interpretation for a particular situation than throw out their entire ordinance and have to start from scratch. If you run into an unresolvable problem with the building inspector, you should then, as a last resort, calmly tell him about PRB-1 and the rules [97.15(e)]. As mentioned previously, more often than not, you will find that it does not help at the building inspector level. At most, all you may get across is that the federal government, through the FCC, has acted under a preemption order called PRB-1. You can say that local governments cannot prohibit antenna towers, nor can they unreasonably restrict them in terms of size and height. However, you can't expect the building inspector to be equipped to engage in a lengthy discussion of the nuances of the legalities of federal preemption.

The Appeal

If there is a reasonable interpretation or even a loophole in the regulations under which you should be allowed to put up the antenna/tower, you can usually appeal that decision to your town's Zoning Board of Appeals (ZBA) or equivalent body. If you have absolutely no alternative, you can ask the ZBA for a variance. This means you are asking the ZBA to relax the zoning rules in your case, to give you a special exemption because of some exceptional difficulty or unreasonable hardship. Variances are granted sparingly because it is difficult to establish severe hardship. Remember, too, that if you apply for a variance, you are admitting in the eyes of the law that the ordinance applies to your antenna. This means that you can't contest or challenge the applicability or the jurisdiction of the ordinance in a later proceeding.

The procedure for appealing the building inspector's ruling is outlined in the regulations. You are given a chance to explain what Amateur Radio is and to present your alternative interpretation that would permit you to legally erect your tower or to explain that your hardship is severe enough that you ought to be allowed to put up your tower despite the zoning rules.

PRB-1 should be used to persuade the ZBA to adopt your more reasonable interpretation because federal law requires it to adopt as reasonable an interpretation as possible. If there is no possible interpretation of the zoning regulations that will allow your tower to go up, then tell the ZBA that PRB-1 and Section 97.15(e) are binding federal regulations that supersede the ZBA's law if there is a conflict. That is, its interpretation of its own zoning ordinance should be guided by the binding order rendered by the FCC in PRB-1. In other words, the local regulations cannot regulate in the "overkill mode." But make no mistake about it; state and local governments can, under the specific language of PRB-1, still regulate antennas for reasons of health, safety and welfare, as long as the

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regulations are reasonable.

Additional Guidelines for the Presentation

Here are a few other things to keep in mind when you make your presentation before the ZBA: Make sure you can establish the safety factors of your tower. On matters of safety, there should be *no compromise* by the municipality. If your installation does not meet building-code requirements, no board (or court, if it comes to that) will allow it. The manufacturer's specifications must be followed.

On the other hand, aesthetics and welfare, particularly the effect on the surrounding property values, are more likely to be areas of compromise by the ZBA. Your task here is threefold: You have to demonstrate your *need* for the proposed tower and the *safety* of the structure, and you have to show that you have taken reasonable steps to *lessen the impact on the surrounding property*.

As mentioned previously, ARRL HQ has helpful materials to assist you in preparing for the hearing in the "PRB-1 Package." The League can also refer you to ARRL Volunteer Counsels or Consulting Engineers near you.

If you haven't done so, try to gauge the opposition, if any, of your neighbors prior to the hearing. Neighbors who show up at the hearing can be friendly or adversarial; touching base with your neighbors in advance is a good way to transform adversaries into people who will speak in support of your position. Be prepared to answer all questions that you can anticipate. Although the touchy area of radio-frequency interference (RFI) does not fall under the jurisdiction of the ZBA, your reaction to questions about RFI might be used by the ZBA members to judge your character (which could form the unwritten or unstated basis for a denial). A ZBA member is more likely to give the benefit of the doubt to someone who sounds like a responsible, good neighbor.

If neighbors or ZBA members raise concerns about RFI, one of the most effective statements you can make is to explain that, although years ago the home-brew nature of ham stations may have resulted in hams being responsible for RFI, today that is hardly the case. With the present level of Amateur Radio sophistication, RFI is rarely a problem, and when it is, it is usually the fault of the manufacturers of the stereo, TV or other home-entertainment device. But explain to the ZBA members that you will work with your neighbors to resolve any RFI problems in the rare event that RFI problems occur. Also, point out that a tower taller than neighbors' homes will help direct your signals *above* their houses, providing added "insurance" against possible problems.

When you make your presentation, keep it clear, concise and simple. Use a written outline so you don't forget key points, but speak directly and respectfully to the ZBA members in your own words. Avoid technical language or ham radio jargon that's incomprehensible to non-hams. The ZBA does not, and has no reason to, care about dB, SWR, wavelengths, DX or anything else "sacred" to Amateur Radio operators. They care about how big your aerial is going to be and what damage it could do to a neighbor's home if it falls (you might point out that towers rarely fall or break, and if they do, it is generally not from the bottom). Emphasize the public service nature of Amateur Radio, and its value to your community in an emergency.

Make sure your demeanor is professional, and dress in a conservative businesslike manner (leave your ARES jumpsuit, call-sign cap, and painter's pants at home). Make sure, also, not to operate in a vacuum; enlist the support of the local Amateur Radio community and ask as many of your fellow hams as possible to show up for the hearing. A unified show of support will make a profound impression on ZBA members who are, after all, ordinary people yet politicians at heart.

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Private Restrictions

There are circumstances under which it is very difficult to erect a tower or an antenna of any kind. Covenants and deed restrictions can be highly restrictive. (See "But I Never Agreed to That!".) A condominium owner "owns" only that which exists *within* the confines of the four walls that forms his unit. The rest of the building and the land are owned by someone else or owned in common by all the unit owners. Unless you can persuade the condominium association to allow you to put up an antenna in a common area, you had better concentrate on operating mobile from your car or bone up on so-called "invisible" or limited-space antennas in attics or crawl spaces in the ceiling (although this may also be a violation of the condominium bylaws). You cannot expect to be able to put up a tower on land or a building that you do not own outright. Private restrictions, commonly called *CC&Rs* (covenants, conditions and restrictions) are another aspect of antenna/tower regulation that exist outside of the zoning regulatory body. CC&Rs are the "fine print" that may be referenced in the deed to your property, *especially* if you are in a planned subdivision that has underground utilities. Your best bet before proceeding with your tower plans is to take a copy of your deed to an attorney to have a limited title search done for the specific purpose of determining whether private restrictions will affect your rights. If you're buying a new home, have a title search done *before* you sign on the dotted line. When you agree to purchase the property, you agree to accept covenants and deed restrictions on the land records, which may preclude you from being able to put up a tower at your new dream home. See **Deed Restrictions** below.

Summary

With respect to governmental, as opposed to private, restrictions, it all boils down to one simple fact: Any licensed ham radio operator who has the private property of a sufficiently sized parcel of land, has the right under federal law to erect a tower and antenna, subject to the reasonable regulation of local and state government.

A substantial amount of money has been spent in legal costs by amateurs in attempts to have courts tell local governments that their idea of reasonable is *not* reasonable under PRB-1. Sometimes a clash cannot be avoided. But if you're like most of us, you want to know how best to go about putting up the highest tower you can without getting into a big legal struggle and alienating your otherwise friendly neighbors.

Emphasis from the start should be on the practical aspects of planning a successful campaign for getting the necessary approvals:

- Be realistic about the physical limitations of your backyard.
- Go on an information-gathering mission at the local town hall to determine which officials and regulations are applicable to your proposed antenna installation.
- Discuss your plans with the local building inspector.
- Determine whether the building inspector's interpretation of how the zoning rules apply to your plans is fair or should be respectfully challenged.
- Then, if you are dissatisfied with the inspector's interpretation, obtain information from ARRL HQ and seek legal advice from a competent attorney as to whether there is any reasonable interpretation of the regulations that would allow you to put up the tower.

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If no such interpretation presents itself, seek a variance or make a frontal assault on the ordinance as being in violation of PRB-1. Once you get into this area of the law, legal advice is often a necessity.

Most amateurs who follow these steps come out of it with a positive result. If a final decision by your local zoning board is unsatisfactory, however, you have the option of taking the matter to court.

Deed Restrictions

Long before zoning regulation of land existed, private restrictions in deeds controlled how land could be used. The English system of common law, that we have inherited, permitted a seller of land to impose certain restrictions on the use of that land, which the seller, even after the sale was long past, could enforce in the courts. These restrictions or covenants were included in the deed from seller to buyer. Today, as noted above, deed restrictions are typically referred to as covenants, conditions and restrictions, *CC&Rs*.

These days, covenants are commonly used, especially in new housing developments, by builders or developers as a means of controlling land use after individual parcels are sold off. Suppose a builder has a tract of 100 homes and is selling them one at a time. The builder, until he is able to sell all of the lots, wants to maintain uniformity so that, for example, one of the buyers cannot paint his house 20 different day-glo colors, making the remaining unsold lots less marketable.

Since the CB boom of the mid-1970s, builders and developers have included antennas in the standard list of things they don't want homeowners to install while the builder is attempting to sell the remainder of the houses in the development. They are concerned that people may find antennas or towers unattractive. So when the subdivision plan is filed in a town's land records, a list of covenants is filed, too. Every deed from the builder makes reference to the list, subjecting every buyer down the line to the restrictions.

Typically, the declaration of covenants provides that enforcement authority passes from the developer to the homeowner's association after the developer sells all the houses in the development and goes on his merry way. The homeowner's association is, among other things, charged with maintaining the aesthetics of the neighborhood and can often determine whether additional structures, such as a tool shed, swing set or antenna can be built. If a homeowner installs an antenna in violation of a covenant, the homeowner's association can bring that owner to court to enforce the covenant. (See "But I Never Agreed to That!".)

Conclusion

Some hams are blessed with living in communities where there are neither zoning nor covenant restrictions on their antenna farms. However, you can't assume that this is the case in your own particular situation. The time to start looking into whether it's okay to put up a tower is *before*, not *after*, you start pouring the concrete for your base section. If you exercise common sense (eg, resist the temptation to put up a Big Bertha on a city lot) and good-faith compliance with the legal procedures, you will undoubtedly be successful in securing permission for an appropriately sized tower for your antenna system. But keep in mind that what you do, and how you do it, affects not only you, but all other radio amateurs in your town, and perhaps -- through precedent-setting court cases -- amateurs throughout the entire country.

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PRB-1 (1985)

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Adopted 9/16/1985

Released 9/19/1985

MEMORANDUM OPINION AND ORDER (FCC 85-506)

Federal preemption of state and Local Regulations Pertaining to Amateur Radio Facilities

Before the Federal Communications Commission
Washington, D.C. 20554 36149
By the Commission: Commissioner Rivera not participating.

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Background

1. On July 16, 1984, the American Radio Relay League, Inc. (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective, reliable amateur radio communications. The ARRL acknowledges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications.

2. Interested parties were advised that they could file comments in the matter. ¹ With extension, comments were due on or before December 26, 1984², with reply comments due on or before January 25, 1985³. Over sixteen hundred comments were filed.

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Local Ordinances

[PRB-1 \(1985\)](#)

[PRB-1 \(1999\)](#)

[PRB-1 \(2000 - Reconsideration\)](#)

[PRB-1 \(2001\)](#)

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3. Conflicts between amateur operators regarding radio antennas and local authorities regarding restrictive ordinances are common. The amateur operator is governed by the regulations contained in Part 97 of our rules. Those rules do not limit the height of an amateur antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some amateur antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and locations, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their antennas is limited by a local ordinance.

4. Examples of restrictive local ordinances were submitted by several amateur operators in this proceeding. Stanley J. Cichy, San Diego, California, noted that in San Diego amateur radio antennas come under a structures ruling which limits building heights to 30 feet. Thus, antennas there are also limited to 30 feet. Alexander Vrenlos, Mundelein, Illinois wrote that an ordinance of the Village of Mundelein provides that an antenna must be a distance from the property line that is equal to one and one-half times its height. In his case, he is limited to an antenna tower for his amateur station just over 53 feet in height.

5. John C. Chapman, an amateur living in Bloomington, Minnesota, commented that he was not able to obtain a building permit to install an amateur radio antenna exceeding 35 feet in height because the Bloomington city ordinance restricted "structures" heights to 35 feet. Mr. Chapman said that the ordinance, when written, undoubtedly applied to buildings but was now being applied to antennas in the absence of a specific ordinance regulating them. There were two options open to him if he wanted to engage in amateur communications. He could request a variance to the ordinance by way of a hearing before the City Council, or he could obtain affidavits from his neighbors swearing that they had no objection to the proposed antenna installation. He got the building permit after obtaining the cooperation of his neighbors. His concern, however, is that he had to get permission from several people before he could effectively engage in radio communications for which he had a valid FCC amateur license.

6. In addition to height restrictions, other limits are enacted by local jurisdictions -- anti-climb devices on towers or fences around them; minimum distances from high voltage power lines; minimum distances of towers from property lines; and regulations pertaining to the structural soundness of the antenna installation. By and

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Licensing, Technical Support and Website Issues

large, amateurs do not find these safety precautions objectionable. What they do object to are the sometime prohibitive, non-refundable application filing fees to obtain a permit to erect an antenna installation and those provisions in ordinances which regulate antennas for purely aesthetic reasons. The amateurs contend, almost universally, that "beauty is in the eye of the beholder." They assert that an antenna installation is not more aesthetically displeasing than other objects that people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.

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Restrictive Comments

7. Amateur operators also oppose restrictions on their amateur operations which are contained in the deeds for their homes or in their apartment leases. Since these restrictive covenants are contractual agreements between private parties, they are not generally a matter of concern to the Commission. However, since some amateurs who commented in this proceeding provided us with examples of restrictive covenants, they are included for information. Mr. Eugene O. Thomas of Hollister, California included in his comments an extract of the Declaration of Covenants and Restrictions for Ridgemark Estates, County of San Benito, State of California. It provides:

"No antenna for transmission or reception of radio signals shall be erected outdoors for use by any dwelling unit except upon approval of the Directors. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any lot which may unreasonably interfere with the reception of television or radio signals upon any other lot."

Marshall Wilson, Jr. provided a copy of the restrictive covenant contained in deeds for the Bell Martin Addition #2, Irving, Texas. It is binding upon all of the owners or purchasers of the lots in the said addition, his or their heirs, executors, administrators or assigns. It reads:

"No antenna or tower shall be erected upon any lot for the purpose of radio operations. William J. Hamilton resides in an apartment building in Gladstone, Missouri. He cites a clause in his lease prohibiting the erection of an antenna. He states that he has been forced to give up operating amateur radio equipment except a hand-held 2 meter (144-148 MHz) radio transceiver. He maintains

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that he should not be penalized just because he lives in an apartment."

Other restrictive covenants are less global in scope than those cited above. For example, Robert Webb purchased a home in Houston, Texas. His deed restriction prohibited "transmitting or receiving antennas extending above the roof line."

8. Amateur operators generally oppose restrictive covenants for several reasons. They maintain that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some state that they impinge on First Amendment rights of free speech. Others believe that a constitutional right is being abridged because, in their view, everyone has a right to access the airwaves regardless of where they live.

9. The contrary belief held by housing subdivision communities and condominium or homeowner's associations is that amateur radio installations constitute safety hazards, cause interference to other electronic equipment which may be operated in the home (televisions, radio, stereos) or are eyesores that detract from the aesthetic and tasteful appearance of the housing development or apartment complex. To counteract these negative consequences, the subdivisions and associations include in their deeds, leases or by-laws restrictions and limitations on the location and height of antennas or, in some cases, prohibit them altogether. The restrictive covenants are contained in the contractual agreement entered into at the time of the sale or lease of the property. Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.

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Supporting Comments

10. The Department of Defense (DOD) supported the ARRL and emphasized in its comments that continued success of existing national security and emergency preparedness telecommunications plans involving amateur stations would be severely diminished if state and local ordinances were allowed to prohibit the construction and usage of effective amateur transmission facilities. DOD utilizes volunteers in the Military Affiliate Radio Service (MARS)⁴, Civil Air Patrol (CAP) and the Radio Amateur Civil Emergency Service (RACES). It points out that these volunteer communicators are operating radio equipment installed in their homes and that undue restrictions on antennas by local authorities adversely affected their efforts. DOD states that the responsiveness of these volunteer systems would be impaired if local ordinances interfere with the effectiveness of these important national telecommunication resources. DOD favors the issuance of a ruling that would set limits for local and state regulatory bodies when they are dealing

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with amateur stations.

11. Various chapters of the American Red Cross also came forward to support the ARRL's request for a preemptive ruling. The Red Cross works closely with amateur radio volunteers. It believes that without amateurs' dedicated support, disaster relief operations would significantly suffer and that its ability to serve disaster victims would be hampered. It feels that antenna height limitations that might be imposed by local bodies will negatively affect the service now rendered by the volunteers.

12. Cities and counties from various parts of the United States filed comments in support of the ARRL's request for a Federal preemption ruling. The comments from the Director of Civil Defense, Port Arthur, Texas are representative:

The Amateur Radio Service plays a vital role with our Civil Defense program here in Port Arthur and the design of these antennas and towers lends greatly to our ability to communicate during times of disaster.

We do not believe that there should be any restrictions on the antennas and towers except for reasonable safety precautions. Tropical storms, hurricanes and tornadoes are a way of life here on the Texas Gulf Coast and good communications are absolutely essential when preparing for a hurricane and even more so during recovery operations after the hurricane has past.

13. The Quarter Century Wireless Association took a strong stand in favor of the issuance of a declaratory ruling. It believes that Federal preemption is necessary so that there will be uniformity for all Amateur radio installations on private property throughout the United States.

14. In its comments, the ARRL argued that the Commission has the jurisdiction to preempt certain local land use regulations which frustrate or prohibit amateur communications. It said that the appropriate standard in preemption cases is not the extent of state and local interest in a given regulation, but rather the impact of that regulation on Federal goals. Its position is that Federal preemption is warranted whenever local governmental regulations relate adversely to the operational aspects of amateur communication. The ARRL maintains that localities routinely employ a variety of land use devices to preclude the installation of effective amateur antennas, including height restrictions, conditional use permits, building setbacks and dimensional limitations on antennas. It sees a declaratory ruling of Federal preemption as necessary to cause municipalities to accommodate amateur operator needs in land use planning efforts.

15. James C. O'Connell, an attorney who has represented several amateurs before local zoning authorities, said that requiring amateurs to seek variances or special use approval to erect reasonable antennas unduly restricts the operation of amateur stations. He suggested that the Commission preempt zoning ordinances which impose

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antenna height limits of less than 65 feet. He said that this height would represent a reasonable accommodation of the communication needs of most amateurs and the legitimate concerns of local zoning authorities.

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Opposing Comments

16. The City of La Mesa, California has a zoning regulation which controls amateur antennas. Its comments reflected an attempt to reach a balanced view.

This regulation has neither the intent, nor the effect, of precluding or inhibiting effective and reliable communications. Such antennas may be built as long as their construction does not unreasonably block views or constitute eyesores. The reasonable assumption is that there are always alternatives at a given site for different placement, and/or methods for aesthetic treatment. Thus, both public objectives of controlling land use for the public health, safety, and convenience, and providing an effective communications network, can be satisfied.

A blanket ruling to completely set aside local control, or a ruling which recognizes control only for the purpose of safety of antenna construction, would be contrary to . . . legitimate local control.

17. Comments from the County of San Diego state:

While we are aware of the benefits provided by amateur operators, we oppose the issuance of a preemption ruling which would elevate 'antenna effectiveness' to a position above all other considerations. We must, however, argue that the local government must have the ability to place reasonable limitations upon the placement and configuration of amateur radio transmitting and receiving antennas. Such ability is necessary to assure that the local decision-makers have the authority to protect the public health, safety and welfare of all citizens. In conclusion, I would like to emphasize an important difference between your regulatory powers and that of local governments. Your Commission's approval of the preemptive requests would establish a 'national policy'. However, any regulation adopted by a local jurisdiction could be overturned by your Commission or a court if such regulation was determined to be unreasonable.

18. The City of Anderson, Indiana, summarized some of the problems that face local communities:

I am sympathetic to the concerns of these antenna owners and I understand that to gain the maximum reception from their devices, optimal location is necessary. However, the preservation of residential zoning districts as 'liveable neighborhoods' is jeopardized by placing these antennas in front yards of homes. Major problems of public safety have been encountered, particularly vision blockage for auto and pedestrian access. In addition, all communities are faced with

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various building lot sizes. Many building lots are so small that established setback requirements (in order to preserve adequate air and light) are vulnerable to the unregulated placement of these antennas. . . . the exercise of preemptive authority by the FCC in granting this request would not be in the best interest of the general public.

19. The National Association of Counties (NACO), the American Planning Association (APA) and the National League of Cities (NLC) all opposed the issuance of an antenna preemption ruling. NACO emphasized that federal and state power must be viewed in harmony and warns that Federal intrusion into local concerns of health, safety and welfare could weaken the traditional police power exercised by the state and unduly interfere with the legitimate activities of the states. NLC believed that both Federal and local interests can be accommodated without preempting local authority to regulate the installation of amateur radio antennas. The APA said that the FCC should continue to leave the issue of regulating amateur antennas with the local government and with the state and Federal courts.

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Discussion

20. When considering preemption, we must begin with two constitutional provisions. The tenth amendment provides that any powers which the constitution does not delegate to the United States or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states. The Supremacy Clause, however, provides that the constitution and the laws of the United States shall supersede any state law to the contrary. Article III, Section 2. Given these basic premises, state laws may be preempted in three ways: First, Congress may expressly preempt the state law. See *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Or, Congress may indicate its intent to completely occupy a given field so that any state law encompassed within that field would implicitly be preempted. Such intent to preempt could be found in a congressional regulatory scheme that was so pervasive that it would be reasonable to assume that Congress did not intend to permit the states to supplement it. See *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). Finally, preemption may be warranted when state law conflicts with federal law. Such conflicts may occur when "compliance with both Federal and state regulations is a physical impossibility," *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142, 143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Furthermore, federal regulations have the same preemptive effect as federal statutes. *Fidelity Federal Savings & Loan Association v. de la Cuesta*, supra.

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Licensing, Technical Support and Website Issues

21. The situation before us requires us to determine the extent to which state and local zoning regulations may conflict with federal policies concerning amateur radio operators.

22. Few matters coming before us present such a clear dichotomy of viewpoint as does the instant issue. The cities, counties, and local communities and housing associations see an obligation to all of their citizens and try to address their concerns. This is accomplished through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate. At the opposite pole are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications. Aligned with the operators are such entities as the Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and a readily available backup network. In this situation, we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The cornerstone on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.

23. Preemption is primarily a function of the extent of the conflict between federal and state and local regulation. Thus, in considering whether our regulations or policies can tolerate a state regulation, we may consider such factors as the severity of the conflict and the reasons underlying the state's regulations. In this regard, we have previously recognized the legitimate and important state interests reflected in local zoning regulations. For example, in *Earth Satellite Communications, Inc.*, 95 FCC 2d 1223 (1983), we recognized that . . . countervailing state interests inhere in the present situation . . . For example, we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the non-federal regulation is applied in a nondiscriminatory manner.

24. Similarly, we recognize here that there are certain general state and local interests which may, in their even-handed application, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of this interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service⁵. Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the

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Amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array for International amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local government may not regulate, nor will we suggest the precise language that must be contained in local ordinances, such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.⁶

26. Obviously, we do not have the staff or financial resources to review all state and local laws that affect amateur operations. We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflict with federal policy, as well as time-consuming and expensive litigation in this area. Amateur operators who believe that local or state governments have been overreaching and thereby have precluded accomplishment of their legitimate communications goals, may, in addition, use this document to bring our policies to the attention of local tribunals and forums.

27. Accordingly, the Request for Declaratory Ruling filed July 16, 1984, by the American Radio Relay League, Inc., IS GRANTED to the extent indicated herein and, in all other respects, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
 Secretary

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Footnotes

1. Public Notice, August 30, 1984, Mimeo. No. 6299, 49 F.R. 36113, September 14, 1984.
2. Public Notice, December 19, 1984, Mimeo No. 1498.
3. Order, November 8, 1984, Mimeo. No. 770.
4. MARS is solely under the auspices of the military which recruits volunteer amateur operators to render assistance to it. The Commission is not involved in the MARS program.
5. 47 CFR Part 97.
6. We reiterate that our ruling herein does not reach restrictive covenants in private contractual agreements. Such agreements are voluntarily entered into by the buyer or tenant when the agreement is executed and do not usually concern this Commission.

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Adopted 11/18/1999

Released 11/19/1999

ORDER (FCC 99-2569)

In the Matter of Modification and Clarification of Policies and Procedures Governing Siting and Maintenance RM-8763 of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service.

Before the Federal Communications Commission

Washington, D.C. 20554 36149

By the Deputy Chief, Wireless Telecommunications Bureau:

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Introduction and Executive Summary

1. In this Order, we address a Petition for Rule Making (Petition), filed on February 7, 1996, by The American Radio Relay League, Inc. (ARRL or Petitioner), asking that the Commission review and modify its policies and procedures pertaining to the Commission's limited preemption of state and local regulations affecting amateur radio facilities. The Petitioner also requests that the Commission amend Section 97.15 of the Commission's Rules to clarify the Commission's preemptive intent with respect to such state and local regulations. We have carefully reviewed the requests, and the supporting arguments, and conclude that the modifications and clarifications suggested by Petitioner would not serve the public interest, convenience and necessity. Therefore, the Petition is denied.

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Background

2. In 1984, ARRL petitioned the Commission for a

[PRB-1 \(1985\)](#)

[PRB-1 \(1999\)](#)

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declaratory ruling that would limit local regulatory control of amateur stations. It was believed that local building codes and zoning regulations had limited the communications ability of licensees in the amateur service. An outdoor antenna is a necessary component for most types of amateur service communications. Municipalities and local land use regulatory authorities regulated the heights, placement and dimensions of antennas. In PRB-1, resolving the ARRL's declaratory ruling petition, the Commission noted that these regulations often result in conflict because the effectiveness of the communications that emanate from an amateur radio station is directly dependent upon the location and the height of the antenna. Consequently in PRB-1, the Commission enunciated the Federal policy toward state and local regulatory restrictions on amateur station facilities.

3. In the MO&O, the Commission declared a limited preemption of state and local regulations governing amateur station facilities, including antennas and support structures. The Commission determined that there was a strong Federal interest in promoting amateur service communications, and that state and local regulations that preclude amateur service communications are in direct conflict with Federal objectives and must be preempted. Furthermore, the Commission stated that a local ordinance or zoning regulation must make reasonable accommodation for amateur communications and must constitute the minimum practicable regulation to accomplish the local authority's legitimate purpose. However, the Commission did not extend the limited preemption to covenants, conditions and restrictions (CC&Rs) in deeds and in condominium by-laws because they are contractual agreements between private parties. Petitioner, inter alia, requests the extension of the limited preemption to such CC&Rs.

4. Petitioner also requests other clarifications to PRB-1, as follows: (a) that local governments must make a reasonable accommodation for amateur radio antennas, rather than balancing their own local interests against the Federal interest in amateur radio; (b) that local governments could not specify a lower height maximum than sixty to seventy feet for an amateur radio antenna structure; (c) that overly burdensome conditions in land use authorizations or imposition of excessive costs is preempted; (d) that denial of a particular use permit or special exception does not relieve a local government from having to make a reasonable accommodation for amateur communications; (e) that conditional use permit procedures can be used to regulate amateur radio antennas, but only as an adjunct to a reasonable height restriction; and, (f) that land use restrictions pertaining to safety that limit the overall height of an amateur radio antenna structure, or restrict installation of an antenna altogether, are invalid unless there is no other alternative available that is less burdensome and still accomplishes the same purpose. The Commission sought comment on the Petition on February 21, 1996.

5. Since the adoption of the Commission's limited preemption policy in PRB-1, Congress enacted Section 704

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of the Telecommunications Act of 1996, concerning the siting of personal wireless service facilities. We note that Section 704 of the Telecom Act encompasses commercial mobile radio services, unlicensed wireless services and common carrier wireless exchange access services. Thus, Section 704 of the Telecom Act, which, among other things, bars state or local regulations that prohibit or have the effect of prohibiting the provision of personal wireless services, does not apply to stations or facilities in the amateur radio service.

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Discussion

6. The Commission's policy with respect to restrictive covenants is clearly stated in the MO&O establishing a limited preemption of state and local regulations. In the MO&O, the Commission stated that PRB-1 does not reach restrictive covenants in private contractual agreements. The Petitioner argues that enforcement of a covenant by the court constitutes "state action", thus converting what otherwise would be a private matter into a matter of state regulation and, thus, subject to the Commission's limited preemption policy. Notwithstanding the clear policy statement that was set forth in PRB-1 excluding restrictive covenants in private contractual agreements as being outside the reach of our limited preemption, we nevertheless strongly encourage associations of homeowners and private contracting parties to follow the principle of reasonable accommodation and to apply it to any and all instances of amateur service communications where they may be involved. Although we do not hesitate to offer such encouragement, we are not persuaded by the Petition or the comments in support thereof that specific rule provisions bringing the private restrictive covenants within the ambit of PRB-1 are necessary or appropriate at this time. Having reached this conclusion, we need not resolve the issue of whether, or under what circumstances, judicial enforcement of private covenants would constitute "state action."

7. Petitioner further requests a clarification of PRB-1 that local authorities must not engage in balancing their enactments against the interest that the Federal Government has in amateur radio, but rather must reasonably accommodate amateur communications. We do not believe a clarification is necessary because the PRB-1 decision precisely stated the principle of "reasonable accommodation". In PRB-1, the Commission stated: "Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose." Given this express Commission language, it is clear that a "balancing of interests" approach is not appropriate in this context.

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8. Petitioner also requests establishment of sixty or seventy feet as the minimum height in a metropolitan area for an amateur antenna structure so that local authorities could not specify a lower height maximum for an amateur antenna. Petitioner argues that such a minimum height would minimize interaction between amateur stations and home electronic equipment and provide reasonable antenna efficiency at different amateur frequencies, MF through UHF and beyond. Petitioner also contends that structures of that height and above can be so located as to minimize the visual impact, and that retractable antennas could be used to address unusual aesthetic situations, such as in historic or scenic zones. We do not believe that it would be prudent or that it is appropriate to set such a standard for amateur antennas and their supporting structures because of varying circumstances that may occur when a particular antenna configuration is under consideration, such as terrain or man-made obstructions. We believe that the policy enunciated in PRB-1 is sound. PRB-1 did not specify a particular height limitation below which a local government may not regulate. The Commission did not want to mandate specific provisions that a local authority must include in a zoning ordinance. We continue to believe that the standards the Commission set, that is, "reasonable accommodation" and "minimum practicable regulation", have worked relatively well. Therefore, we are not persuaded that changes to the Commission's policy of leaving the specifics of zoning regulations to the local authority, including provisions concerning the height of an amateur antenna, are necessary at this time.

9. Petitioner further requests that the Commission specifically preempt overly burdensome conditions and excessive costs levied by a local authority in connection with engineering certifications or issuance of antenna permits. Specifically, Petitioner argues that assessment of unusual costs for processing an antenna permit application cannot be used by the local authority as a means of indirectly prohibiting the antenna. Petitioner states that the same argument is true of conditional use permits that require an amateur antenna to be screened from view by the installation of mature vegetation. According to the ARRL, if full vegetative screening cannot be accomplished in a cost-effective manner, a condition requiring such screening is a de facto prohibition. Although Petitioner concedes that a municipality may require amateur operators to pay reasonable expenses to obtain amateur permits, the Petitioner objects to the imposition of unreasonable expenses because such expenses would discourage or prohibit the installation of amateur antennas. Petitioner also requests that the Commission declare as invalid certain land use restrictions based on safety considerations, such as setbacks on the property where the antenna is to be erected, unless there are no other alternatives that would accomplish the same purpose. Finally, Petitioner requests that the Commission specify that, if a local authority denies a conditional use permit or a special exception request, it still has the obligation to make a reasonable accommodation for amateur communications. We return once again to the position that we have stated earlier in this Order, that is,

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that the standards of "reasonable accommodation" and "minimum practicable regulation" are sufficiently efficacious as guideposts for state, local and municipal authorities. We believe that the effectiveness of these guidelines or standards can be gauged by the fact that a local zoning authority would recognize at the outset, when crafting zoning regulations, the potential impact that high antenna towers in heavily-populated urban or suburban locales could have and, thus, would draft their regulations accordingly. In addition, we believe that PRB-1's guidelines brings to a local zoning board's awareness that the very least regulation necessary for the welfare of the community must be the aim of its regulations so that such regulations will not impinge on the needs of amateur operators to engage in amateur communications.

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Conclusion

10. In our view, Petitioner has not demonstrated that the clarifications requested are necessary. Accordingly, we conclude that the public interest would best be served by denying the ARRL request for modification and clarification of Commission policies and procedures concerning the limited preemption of state and local regulations that affect amateur service radio facilities.

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Ordering Clause

11. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), the petition for rule making, RM-8763, filed by The American Radio Relay League, Inc. on February 7, 1996, IS HEREBY DENIED. This action is taken under the delegated authority contained in Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. 0.131 and 0.331.

Federal Communications Commission
Kathleen O'Brien Ham
Deputy Chief, Wireless
Telecommunications Bureau

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PRB-1 (1985)
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PRB-1 (2001)

Adopted 11/13/2000

Released 11/15/2000

ORDER ON RECONSIDERATION (RM 8763)

In the Matter of Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service

Before the Federal Communications Commission
Washington, D.C. 20554 36149
By the Deputy Chief, Wireless Telecommunications Bureau.

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Introduction and Executive Summary

1. In this Order on Reconsideration, we address Petitions for Reconsideration (ARRL Petition) filed by the American Radio Relay League, Inc. (ARRL), and by Barry N. Gorodetzer and Kathy Conard-Gorodetzer (Gorodetzer Petition) (collectively "Petitioners"). The Petitions seek reconsideration of a Wireless Telecommunications Bureau (Bureau) Order, released November 19, 1999, denying the petition for rule making filed by ARRL on February 7, 1996. For the reasons given herein, we deny the subject petitions for reconsideration.

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Background

2. In its 1985 PRB-1 decision, the Commission established a policy of limited preemption of state and local regulations governing amateur station facilities, including antennas and support structures. However, the Commission expressly decided not to extend its limited preemption policy to covenants, conditions and

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restrictions (CC&Rs) in deeds and in condominium by-laws.

3. On February 7, 1996, ARRL filed a petition for rule making seeking a review of the Commission's limited preemption policy. ARRL requested, inter alia, that limited preemption be extended to CC&Rs. In an Order, released November 19, 1999, we denied the petition for rule making. We concluded that specific rule provisions bringing private restrictive covenants within the ambit of PRB-1 were not necessary or appropriate. On reconsideration, the petitioners reiterate the request that the Commission's limited preemption policy be extended to CC&Rs. ARRL also seeks a declaratory ruling that the imposition of unreasonable or excessive costs in obtaining a land use permit for an amateur antenna, or fulfilling a condition in such a permit, would be contrary to the Commission's limited preemption policy enunciated in PRB-1.

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Discussion

4. In PRB-1, the Commission stated that CC&Rs restricting amateur operations were not a matter of concern to it, because "[s]uch agreements are voluntarily entered into by the buyer or tenant when the agreement is executed," and "[p]urchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere." ARRL directed much of its rulemaking petition, and the bulk of its petition for Reconsideration, to arguing that the Commission has authority to preempt CC&Rs that restrict amateur operations. In the Order, we declined to address this argument because we were not persuaded that such action, even if authorized, is "necessary or appropriate at this time."

5. The Petitioners contend, however, that the Telecommunications Act of 1996 provided the Commission with the authority to address CC&Rs, and, further, that the Commission has acknowledged this authority. ARRL further argues that restrictive covenants in deeds "have never been the equivalent of private contracts." Moreover, ARRL states that the purchaser of land, in modern transactions, "never actually agrees, and very seldom even understands when he or she buys property subject to deed restrictions that amateur antennas are not permitted."

6. Assuming, without deciding, that the Commission has authority to address CC&Rs in the context of amateur radio facilities, this alone does not necessarily warrant revisiting the exclusion of CC&Rs from the Commission's limited preemption policy in this context. Unlike over-the-air reception devices (OTARDs), which are very limited in size in residential areas, amateur station antennas may vary widely in size and shape. Amateur station antenna configurations depend on a variety of parameters, including the types of communications that the amateur

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operator desires to engage in, the intended distance of the communications, and the frequency band. Amateur station antennas, in order to achieve the particular objectives of the amateur radio operator, can be a whip attached to an automobile, mounted on a structure hundreds of feet in height, or a wire hundreds (or even more than a thousand) of feet in length. They can be constructed of various materials occupying completely an area the size of a typical backyard. In addition, there can be an array of different types of antennas. Regardless of the extent of our discretion with respect to CC&Rs generally, we are not persuaded by ARRL's arguments that it is appropriate at this time to consider exercising such discretion with respect to amateur station antenna preemption. Moreover, we do not believe that ARRL has demonstrated that there has been a significant change in the underlying rationale of the PRB-1 decision, or that the facts and circumstances in support thereof, that would necessitate revisiting the issue. In the absence of such showing, we believe that the PRB-1 ruling correctly reflects the Commission's preemption policy in the amateur radio context.

7. In PRB-1, the Commission held that "local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose." The ARRL's second request in its Petition concerns imposition of excessive costs for, or the inclusion of burdensome conditions in, permits or variances needed prior to installation of an outdoor antenna. As it did in its petition for rule making, ARRL requests a ruling from the Commission that imposition of unreasonable or excessive costs levied by a municipality for a land use permit, or unreasonable costs to fulfill conditions appended to such permit, violates PRB-1. In our Order, we concluded that the current standards in PRB-1 of reasonable accommodation and minimum practicable regulation are sufficiently specific to cover any concerns related to unreasonable fees or onerous conditions. With these guidelines in place, an amateur operator may apprise a zoning authority that a permit fee is too high, and therefore unreasonable, or that a condition is more than minimum regulation, and, therefore, impracticable to comply with.

8. We take this opportunity to amplify upon the meaning of 'reasonable accommodation' of amateur communications in the context of local land use and zoning regulations. The Commission adopted a limited preemption policy for amateur communications because there is a strong federal interest in promoting amateur communications. We do not believe that a zoning regulation that provides extreme or excessive prohibition of amateur communications could be deemed to be a reasonable accommodation. For example, we believe that a regulation that would restrict amateur communications using small dish antennas, antennas that do not present any safety or health hazard, or antennas that are similar to those normally permitted for viewing television, either

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locally or by satellite, is not a reasonable accommodation or the minimum practicable regulation. On the other hand, we recognize that a local community that wants to preserve residential areas as livable neighborhoods may adopt zoning regulations that forbid the construction and installation in a residential neighborhood of the type of antenna that is commonly and universally associated with those that one finds in a factory area or an industrialized complex. Although such a regulation could constrain amateur communications, we do not view it as failing to provide reasonable accommodation to amateur communications.

9. In his comments supporting the ARRL Petition, Duane Mantick states that the Commission's rules regarding radio frequency (RF) safety and the actions of local authorities are inconsistent because to comply with the RF safety requirements an antenna must be a certain height in order to keep 2 meter and 10 meter radio signals away from the general public. According to Mr. Mantick, this is in direct conflict with the local zoning regulations and covenant provisions which are designed to keep the height of the antenna structure as low as possible. Mr. Mantick argues that the amateur operator must, in order to comply with safety requirements, reduce output power to 50 watts or less and thus sacrifice transmission effectiveness, and due to a low antenna, sacrifice reception effectiveness as well. It appears that Mr. Mantick's comments overstate the situation that an amateur operator faces. An environmental evaluation needs to be made only if the power on 10 meters exceeds 50 watts. Further, if more power is employed at the station and measures are required to prevent human exposure to RF electromagnetic fields, then adjustments can be made at the amateur station regarding the amount of power used, the duty cycle employed, and the antenna configuration. Thus, it is feasible for an amateur operator to comply with the Commission's safety requirements relating to human exposure to RF radiation, and at the same time to comply with local zoning regulations that govern antenna height. In sum, while we appreciate that the two considerations discussed above, that is, safety requirements vis-...-vis zoning regulations, might present a challenge to the amateur operator, we do not believe that the safety of individuals should be compromised to address such challenge. Moreover, we continue to believe that we should not specify precise height limitations below which a community may not regulate, given the varying circumstances that may occur, as a response to this challenge.

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Conclusion

10. Accordingly, we conclude that the Petitions for Reconsideration filed by the ARRL and Barry and Kathy Conard-Gorodetzer should be partially granted insofar as we have provided clarification herein, but in all other respects should be denied.

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Ordering Clause

11. IT IS ORDERED THAT, pursuant to Sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. - 154(i), 405(a), and Section 1.106 of the Commission's Rules, 47 C.F.R. - 1.106, the Petitions for Reconsideration of the American Radio Relay League, Inc., filed on December 20, 1999, and Barry and Kathy Conard-Gorodetzer, filed on December 17, 1999, ARE PARTIALLY GRANTED to the extent clarification has been provided herein, but in all other respects ARE DENIED. This action is taken under delegated authority contained in Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. - 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION
Kathleen O'Brien Ham
Deputy Chief, Wireless Telecommunications Bureau

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PRB-1 (2001)

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Adopted 12/18/2001

Released 12/26/2001

ORDER ON RECONSIDERATION (RM 8763)

In the Matter of Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service

By the Commission:

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Introduction

1. The Commission has before it an Application for Review filed on December 15, 2000, by the American Radio Relay League (ARRL).¹ ARRL requests review of the November 13, 2000, decision² of the Deputy Chief, Wireless Telecommunications Bureau (Bureau), which partially granted ARRL's petition for clarification of the Commission's limited preemption policy of state and local regulation of the siting and maintenance of antennas and antenna support structures used by licensees in the Amateur Radio Service, but denied it in all other respects.³ Specifically, ARRL requests that we expand the Commission's limited preemption policy for antennas and antenna support structures used in the Amateur Radio Service to include covenants, conditions and restrictions (CC&Rs) contained in deeds, bylaws of homeowner associations (HOA) or regulations of an architectural control committee (ACC). Based on the record in this proceeding, we find no basis to reverse the Bureau's decision. Accordingly, ARRL's Application for Review is denied.

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Background

[PRB-1 \(1985\)](#)

[PRB-1 \(1999\)](#)

[PRB-1 \(2000 - Reconsideration\)](#)

[PRB-1 \(2001\)](#)

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2. In a Memorandum Opinion and Order, adopted September 16, 1985 (PRB-1), the Commission established a policy of limited preemption of state and local regulations governing amateur station facilities, including antennas and support structures.⁴ In that proceeding, the Commission expressly decided not to extend its limited preemption policy to CC&Rs in home ownership deeds and in condominium bylaws because "[s]uch agreements are voluntarily entered into by the buyer or tenant when the agreement is executed and do not usually concern the Commission."⁵

3. On February 7, 1996, ARRL filed a petition for rule making seeking a review of the Commission's limited preemption policy and an expansion of the policy to include CC&Rs in private covenants.⁶ In an Order, released November 19, 1999, the Deputy Chief, Wireless Telecommunications Bureau, denied the petition for rule making on the grounds that specific rule provisions bringing private restrictive covenants within the scope of PRB-1 were neither necessary nor appropriate.⁷ On December 20, 1999, ARRL filed a petition for reconsideration of the Bureau's decision; the Gorodetzers filed a petition for reconsideration on December 17, 1999. On November 13, 2000, the Bureau denied both petitions insofar as they had requested bringing CC&Rs within the scope of PRB-1.⁸

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Discussion

4. ARRL believes that the Commission policy set forth in PRB-1 is discriminatory because it does not encompass private covenants.⁹ Further, it appears that ARRL assumes that the only reason the Commission did not extend PRB-1 to CC&Rs in 1985 was that "the Commission believed it did not have the authority to preempt private agreements . . ."¹⁰ ARRL goes on to argue, based upon the Commission's actions with respect to over the air reception devices (OTARDs) that the Commission in fact has jurisdiction to preempt CC&Rs.¹¹ As a result, it asks the Commission to require that private covenants found in deeds, HOA bylaws and ACC regulations state that amateur communications and antennas are subject to the Commission's limited preemption policy, as expressed in the contexts of "reasonable accommodation" and "minimum practicable regulation of amateur antennas and support structures."¹²

5. We recognize that the Amateur Radio service is a voluntary, noncommercial communication service that plays an important role in providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Accordingly, we agree with ARRL that there is a strong federal interest

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in promoting amateur radio communications.¹³ However, we believe that PRB-1 adequately protects that predominant federal interest from regulations that would frustrate the important purposes of the Amateur Radio Service,¹⁴ by preempting state and local regulations that preclude amateur communications in their communities.

6. We disagree with ARRL's analysis in that PRB-1 did not base the decision to exclude CC&Rs from the Commission's preemption policy upon the Commission's jurisdiction, or lack thereof. Rather, the Commission's decision was premised upon the fundamental difference between state and local regulations, with which an amateur operator must comply, and CC&Rs, which are the product of a voluntary agreement involving the amateur operator. ARRL argues that whether CC&Rs are "voluntary" is "irrelevant . . . to whether the municipality is violating Federal communications policy."¹⁵ While we agree that the voluntary nature of CC&Rs do not always preclude preemption,¹⁶ we believe it is a relevant factor in preemption analysis. In OTARD, for example, there was a strong statutory policy against restrictions that impaired a viewer's ability to receive over the air video services. Here, there has not been a sufficient showing that CC&Rs prevent amateur radio operators from pursuing the basis and purpose of the amateur service.¹⁷ In this regard, we note that there are other methods amateur radio operators can use to transmit amateur service communications that do not require an antenna installation at their residence. These methods include, among other things, operation of the station at a location other than their residence, mobile operations, and use of a club station.

7. ARRL argues, "The private contractual nature of covenants was, however, shown not to be a limiting factor in the OTARD decision. It cannot, therefore, in the context of PRB-1 serve as a justification for the arbitrary and disparate treatment of radio amateurs similarly situated, save for the source of the land use regulations applicable to their residential station locations."¹⁷ We believe the OTARD decision does not support ARRL's request because the decision to preempt restrictions on OTARDs was based upon significant policy objectives that are not present in this case, and which could not be adequately accomplished without the Commission's intervention. Indeed, the Commission does not exercise its preemption power lightly,¹⁹ and employs this power only as necessary to carry out the provisions of the Communications Act. The OTARD rule "[was] designed to promote two complementary federal objectives: (a) to ensure that consumers have access to a broad range of video programming services, and (b) to foster full and fair competition among different types of video programming services."²⁰ The Commission concluded that preemption was necessary in order to meet those objectives. Thereafter, the Commission extended the OTARD protections to antennas used to transmit or receive fixed wireless signals to further one of the primary goals of the 1996 Communications Act, which is to promote telecommunications competition and encourage the commercial deployment of new telecommunications

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technologies.²¹ In contrast, none of these objectives applies to the Amateur Radio Service, which is a voluntary noncommercial service.²² Furthermore, ARRL has not demonstrated that private covenants have a substantial impact on the ability of amateurs to fulfill the fundamental purposes of the Amateur Radio Service set forth in Section 97.1 of the Commission's Rules.²⁴ Thus, we conclude that, in the instant case, while preemption is appropriate with respect to state and local regulations, it is not similarly appropriate with respect to CC&Rs.

8. ARRL also objects to the Bureau's reliance upon the fact that some amateur antennas can be much larger than OTARDs.²⁴ ARRL characterizes the examples of different types of antennas given in the Bureau's Recon Order as 'incendiary references' to exceptional types of amateur antennas that do not reflect what would be permitted by PRB-1 in densely-populated residential areas.²⁵ While we do not believe that the size of the antennas is a decisional difference, in our view, the Bureau's reliance upon the distinctions in antenna size between amateur antennas and OTARDs was reasonably based on legitimate policy considerations. In PRB-1, the Commission explicitly discussed the interests HOAs and ACCs had in imposing "restrictions and limitations on the location and height of antennas."²⁶ We believe that in using examples of antenna configurations and arrays, the Bureau merely amplified what was already alluded to in PRB-1, as originally adopted. Thus, we find that no new ground was broken in the Bureau's Recon Order. We note that ARRL is proposing a policy of reasonable accommodation, as opposed to the total preemption imposed in the OTARD proceeding.²⁷ Nonetheless, given the great variance in the size and configuration of amateur antennas, we are concerned that such a policy would be considerably more complicated for HOAs and ACCs to administer. Finally, we note that ARRL has submitted no specific evidence that would persuade us to abandon our long-standing policy of excluding CC&Rs in private covenants from our ruling in PRB-1. We recognize the importance of preserving the integrity of contractual relations. We are therefore reluctant to pre-empt private parties' freedom of contract unless it is shown that private agreements will seriously disrupt the federal regulatory scheme or unless there is another strong countervailing reason to do so, a showing that has not been made here. However, should Congress see fit to enact a statutory directive mandating the expansion of our reasonable accommodation policy, the Commission would expeditiously act to fulfill its obligation thereunder.

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Conclusion and Ordering Clauses

9. Accordingly, for the reasons discussed above, we conclude that the Bureau's denial of the subject petitions for reconsideration, insofar as they pertain to inclusion of CC&Rs in private covenants, was correct and should be affirmed. Therefore, the scope of the limited preemption

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policy of PRB-1 for amateur radio stations remains applicable only to regulations of state, county, municipal and other local governing bodies, and is not applicable to HOA bylaws and ACC regulations.

10. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority of Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, that the Application for Review filed by The American Radio Relay League on December 15, 2000, IS DENIED.

11. IT IS ORDERED that, pursuant to the authority of Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, that the Application for Review filed by Barry Gorodetzer and Kathy Conard-Gorodetzer on January 3, 2001, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION
Magalie Roman Salas
Secretary

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1. Application for Review (filed Dec. 15, 2000) (ARRL AFR).
2. Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antenna and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service, Order on Reconsideration, 15 FCC Rcd 22151 (2000) (Recon Order). In a related matter, on January 3, 2001, Barry Gorodetzer and Kathy Conard-Gorodetzer filed a letter seeking Commission review of the Recon Order (Gorodetzer AFR). Section 1.115(d) of the Commission's Rules requires that applications for review of actions pursuant to delegated authority be filed within 30 days of public notice of the action. In this case, public notice of the Recon Order was given on November 13, 2000, the release date. See 47 C.F.R. § 1.4(b)(2). The Gorodetzer AFR is untimely because it was filed more than 30 days after public notice of the Recon Order was given. The Gorodetzers also failed to seek a waiver or extension of the deadline to file an application for review. Accordingly, we will dismiss the Gorodetzer AFR.
3. Recon Order at 5 ¶ 11. Federal Communications Commission FCC 01-372
4. See Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, Memorandum Opinion and Order, PRB-1, 101 FCC 2d 952 (1985) (PRB-1).
5. Id. at 960 n.6.
6. ARRL Petition for Rule Making, filed Feb. 7, 1996.
7. Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio

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Antennas and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service, Order, 14 FCC Rcd 19413, 19415 ¶ 6, 19417 ¶ 11 (1999).

8. Recon Order at 5 ¶ 11.

9. ARRL AFR at 5.

10. Id. at 11 (emphasis in original).

11. Id. at 7-8.

12. Id. at 10. Federal Communications Commission FCC 01-372

13. Id. at 9.

14. PRB-1, 101 FCC 2d at 959-60 ¶¶ 23-24.

15. ARRL AFR at 15.

16. See In the Matter of Promotion of Competitive Networks in Local Telecommunications, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, FCC 00-366, 15 FCC Rcd 22983 (2000) (Competitive Networks Fixed Wireless Order).

17. See infra n.23.

18. Id. at 19.

19. See Gregory v. Ashcroft, 501 U.S. 452, 460 (1991) (opining that courts must assume that Congress does not exercise the power to preempt lightly). Federal Communications Commission FCC 01-372

20. Preemption of Local Zoning Regulation of Satellite Earth Stations, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 19276, 19281 ¶ 6 (1996).

21. See Competitive Networks Fixed Wireless Order, 15 FCC Rcd at 23028.

22. See 47 C.F.R. § 97.1(a)

23. The fundamental purposes of the Amateur Radio Service are expressed in the following principles: (a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications; (b) Continuation and extension of the amateur's proven ability to contribute to the advancement of the radio art; (c) Encouragement and improvement of the amateur service through rules which provide for advancing skills in both the communication and technical phases of the art; (d) Expansion of the existing reservoir within the amateur radio service of trained operators, technicians, and electronics experts; and (e) Continuation and extension of the amateur's unique ability to enhance international

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TESTIMONY REGARDING HB 2805

Kansas Senate Utilities Committee

By

JD SPRADLING

Kansas Certified Emergency Manager
ARES Emergency Coordinator Mi Co D4
PRB-1 Committee Chairman
Civil Air Patrol member

Thank you Mr. Chairman for letting me speak on behalf of HB 2805.

Since the 9-11 tragedy, Amateur Radio Emergency Communication personnel have been considered to be Homeland Security Emergency Communication's first responders. We are federally licensed, federally trained Emergency Communicators. We strive to stay ahead of the curve by being proactive with our training, our equipment and real time events. We have come to a point in Kansas that we need standardized legislation that would enhance our communication capabilities. Just like the state of Kansas has been doing with Executive Order 07/27, which mandates a state wide communications interoperability strategy for public safety and its citizens which will improve state wide communications.

Using the state's leadership and guidelines, the Kansas Emergency Communication Preservation Act is our effort to show Kansas and its citizens that the Amateur Radio Community will continue to be there to provide emergency communications during times of devastation.

PRB-1 or HB 2805 does not set new legal precedent. It simply assures Kansas state law reflects the federal rules regarding Amateur Radio Stations at no cost to the state or its citizens. This has worked well in 25 other states that have passed similar legislation.

Kansas has always been in the forefront of needed change. Let us continue that process by passing HB 2805 and encourage members to get Kansas Emergency Communication Preservation Act moved out of committee so we can finish the legislative process to better assist our served agencies and the citizens of the great state of Kansas during times of disaster.

03/12/08

Senate Utilities Committee
March 12, 2008
Attachment 7-1

Senate Utilities Committee

House Bill 2805

TESTIMONY

Mr. Chairman and Ladies and Gentleman of Senate Utilities Committee:

Good afternoon my name is Bruce Cassida. I am an amateur radio operator licensed through the Federal Communications Commission. I am also involved in emergency radio operations and communications and privileged to be the Radio Amateur Civil Emergency Service Officer and the Amateur Radio Emergency Service Delta-4 Assistant Emergency Coordinator in Miami County.

I am one of the many amateur radio operators in Kansas who donate their personal equipment and time to set up a radio network in the event of a disaster or any emergency condition so communications can be quickly restored for agencies such as the Red Cross, Federal Emergency Management Agency, Salvation Army, local and state law enforcement agencies or any organization who needs our help. We are here today to ask for your support for House Bill 2805.

This bill will ensure communication can be properly restored in the event of a disaster that disrupts our normal flow in life as the tornado in Greensburg, hurricane Katrina and the 911 terrorist attacks in New York. Amateur radio operators from all over the United States played a very important role in passing information in each of these incidents but in Kansas many operators were

Senate Utilities Committee
March 12, 2008
Attachment 8-1

hampered by unjustified restrictions on their antenna systems that prevented communicating over long and short distances.

This bill as presented does not alter any pre-existing agreement that an amateur home owner has agreed to with a homeowners association but allows clarification for antenna and tower construction under Federal Communications Commission Rules where homeowners who live outside associations wish to establish a new installation. Most local city and county regulations limit antenna heights to approximately 35 feet. This height in many cases does not even clear the homes roof top. Many counties use the same formula but allow cell phone companies up to 200 feet and higher in many cases. May be some feel cell phone communication is more important but isn't also the establishment of a radio network that supports Kansas Homeland Security and a backup source for all our Kansas agencies, when cell phones are overcrowded or fail, who will need communications in the event of an emergency or disaster.

The proliferation of cell phone towers built since the 1980's has caused many county and city governments to pass zoning laws that unintentionally restrict the ability of radio amateurs to install effective antenna systems. In 1985, at the ARRL's request, the Federal Communications Commission issued Memorandum Opinion and Order PRB-1. In PRB-1 the FCC pre-empted local zoning laws that did not make "reasonable accommodation" for amateur radio antennas. The PRB-1 pre-emption has been used effectively to change zoning laws all over the country, but it has required significant effort on the part of radio amateurs who have had to deal with this issue one jurisdiction at a time. Many local zoning boards don't give FCC regulations adequate consideration when making zoning decisions and across the country

amateurs have found that state laws are a more effective tool for influencing local zoning regulations. So beginning in the 1990's, amateurs began lobbying for legislation that would place PRB-1-type language into their state laws. Today 25 states have passed amateur radio antenna legislation. We need to work hard to get the PRB-1 legislation passed in Kansas. Your support is crucial to this effort.

House Bill 2805 follows the guidelines already established by the Federal Communications Commission but not recognized by many local cities and counties in Kansas. These rules have already been adopted by many states that realize the importance of providing quick emergency communication. I ask that you please help to get House Bill 2805 passed so we may be able to serve Kansas effectively in times of emergencies and disaster. Thank you for this opportunity to address this issue.

Bruce Cassida ARS: WOSPC

RACES Officer / ARES D-4 AEC Miami County

PRB-1 Committee Member

Testimony for House Bill 2805
Senate Utilities Committee

By
David L. Jacobs, WB0SRX
Amateur Radio Emergency Service/Radio Amateur Civil
Emergency Service

Mr. Chairman, I appreciate this opportunity to speak.

As a limited resource, but with unlimited boundaries, the Federal Government, under their obligation to provide for interstate commerce, created the Federal Radio Commission. The Federal Radio Commission of 1927 was responsible for the concept of band space management that is still used today. The amateur radio service space was and still is justified based upon four basic tenets to provide for the public good. They are:

- Providing emergency communications.
- The amateur's proven ability to contribute to the advancement of the radio art.
- The expansion of the existing reservoir of trained operators, technicians, and electronics experts.
- To enhance international goodwill.

It is interesting how these four tenets have woven together to create a uniquely capable resource. It is because of the second and third items, advancement of the radio art, and a reservoir of experts that hams have provided such advancements as Single-Side Band, and the cell design adapted for cell phones. Most recently, it is a Ham who is leading an effort to use RF in the treatment of cancer.

Hams constantly train, both by ongoing exercises, and by attending classes. We can tell you what band, mode, time-of-day and other factors to consider in “getting the message through”.

Communicating is our avocation. We spend a great deal of

personal time and effort learning the art of radio communications. Technology has made wireless “easy”. But even in this day and age of cell phones and WiFi, when the chips are down, it quickly becomes obvious that it will take someone special to get the job done. Just like Hollywood has so often depicted... it will take a Ham. Additionally, there are organized, and Department of Homeland Security recognized courses offered by the American Radio Relay League. The ARRL is the Amateurs “union” body and representative to the Federal Government.

Because of the expertise and training of the Ham operators, we are uniquely qualified for providing reliable ad-hoc emergency communications. It is the antenna height which allows for the VHF, line-of-sight communications which provide the critical “last-mile” of emergency communications to be provided reliability on a flat terrain such as Kansas. For example, KTWU, channel 11 here in Topeka uses a 300 foot antenna to make a reliable VHF signal for a 30 mile radius.

Additionally, antenna height has a greater impact on providing coast-to-coast communication. Not all emergencies happen in Kansas. But Kansans can help in cases of international and maritime need as well.

House Bill 2805 specifically does not interfere with covenants or title restrictions.

There are those who might say this bill is intrusive to the community's rights to set their own standards. To that, I say the local authorities are not well versed in the Amateur Operators needs. How could they be? They cannot be expected to be experts in all matters. This is why the FCC provided the PRB-1 guidance, to assist in understanding the needs of the Ham in this regard. Local governance is like my attempting to set rules for golf. I don't play golf. I know nothing about it. So it seems to me that if I were

to set the standards, I would, in the interest of the safety and health of the players, limit the weight the player would have to carry by limiting the number of clubs. And I would want the clubs to look good. So left up to me, Tiger Woods might well be playing his next tournament with only a single green putter. This bill provides the baseline for the local ordinance writer to utilize.

By supporting House Bill 2805, you will be **preserving** the technical needs of the Ham operator to provide reliable **emergency communications**. Help us to help you.

David L. Jacobs
WB0SRX
ARES/RACES
Miami County, KS



ARRL The national association for
AMATEUR RADIO

Bruce Frahm KØBJ
Director Midwest Division
1553 County Road T
Colby KS 67701

TO Utilities committee
RE HB 2805
8 March 2008

Committee members,

As the elected board representative of 1547 Kansas Amateur Radio Operator members of ARRL I write today in support of HB2805. In 1985 the Federal Communications Commission recognized the need to protect its amateur radio licensees with limited preemption of non-federal antenna restrictions, known as PRB-1. FCC cited the unique proven ability of amateur radio (ham radio) operators to provide temporary communications in times of disaster or distress to law enforcement, relief organizations, National Weather Service and other served agencies. In carrying out this role some hams have been impeded by local or state ordinances placing restrictions on antenna structures critical to amateur radio communications. PRB-1's language demands "reasonable accommodation" of the needs of these volunteer communicators when implementing zoning-type restrictions.

As time has passed since the enactment of PRB-1 ARRL has found that when states codify language similar to PRB-1 it is simpler and more effective to accomplish the reasonable accommodation of hams' needs while maintaining sufficient control that legitimate local government concerns are addressed. To date twenty five states have adopted PRB-1 affirming legislation. Please make Kansas the next state to do so.

In the two decades since PRB-1 became law cell phones have proliferated. Yet when unusual events occur, often the phone circuits are either temporarily destroyed or are swamped with traffic not related to disaster mitigation. Amateur radio operators are tested on technical details in order to earn their licenses. Our organization provides training and has a formal network of volunteer hams (Amateur Radio Emergency Service) who regularly hone their skills in drills and have seen action in numerous Kansas relief operations. The tornadoes in Greensburg and Hoisington, flooding in southeast Kansas and the western Kansas blizzard are some of the most recent examples where ARES operators have filled a vital communications role for police, Red Cross, Salvation Army and others. Our ingenuity in creating workarounds when components fail and our ability to provide interoperability amongst various agencies are top attributes. And these services are provided as volunteers. We also work with National Weather Service in providing real-time "ground truth" observations which enhance the ability of NWS to provide timely information to the public regarding severe convective storms, snow and flood threats.

AMERICAN RADIO RELAY LEAGUE

INTERNATIONAL SECRETARIAT OF THE INTERNATIONAL AMATEUR RADIO UNION

Senate Utilities Committee
March 12, 2008
Attachment 10-1

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ARRL The national association for
AMATEUR RADIO

TO Utilities committee
RE HB 2805
25 February 2008

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The cell phone proliferation mentioned earlier has also increased instances of municipalities desiring to control placement of towers and antennas. While that is a worthy consideration we seek to insure that ordinances aren't made unnecessarily broad. HB 2805 will be an effective tool in demonstrating to zoning committees and other local government bodies that it is not only law, but in the best interest of our state to have amateur radio operators with towers and antennas capable of providing ad-hoc communications for served agencies to the best of their ability.

I sit on a board of fifteen directors for ARRL, the national association for Amateur Radio, and represent the 6585 members of Kansas, Missouri, Nebraska and Iowa. Missouri's PRB-1 language is in Revised Statutes Section 67.329 On behalf of our fifteen hundred Kansas members and all Kansas citizens I ask you to join your House colleagues and act favorably on HB 2805.

Sincerely,

Bruce Frahm KØBJ
ARRL Midwest Division Director
Colby KS

AMERICAN RADIO RELAY LEAGUE

INTERNATIONAL SECRETARIAT OF THE INTERNATIONAL AMATEUR RADIO UNION

Public Service

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TESTIMONY BEFORE THE
KANSAS SENATE UTILITIES COMMITTEE

HEARING ON HB 2805

MARCH 12, 2008

Mr. Chairman, and Ladies and Gentlemen of the Committee:

My name is Matt May. I am an amateur radio operator (KC4WCG), living in Merriam. I have been an amateur since 1990 and have been interested in disaster response since I was one of the first on the scene following a tornado that struck my home town of Lawrence Kansas in 1982. As a result of that experience I have dedicated myself as both a volunteer and a professional to supporting the efforts to help prevent, respond, and recover from all types of disasters. As a result of my volunteer experiences I have been able to support over 37 major events including several hurricanes such as Andrew, Floyd and Opal. I even was able to support my home town 20 years after my first disaster experience by serving as the Disaster Services Chairman of the Douglas County chapter of the American Red Cross when Lawrence was impacted by another tornado in 2002.

During all of these experiences I have seen, as well as been a part of, response and recovery efforts. It is that experience that has afforded me the background that I use today in my professional position as the Technology Manager for Emergency Services division of the Mid-America Regional Council. Today I speak as a private citizen desiring to volunteer in service to my state and community.

One of the volunteer opportunities I currently enjoy is serving as Chairman of the Metropolitan Emergency Communications Council, a bi-state group made up of both amateur radio groups and the agencies they serve including most of the Emergency Management agencies in the KC metro area, National Weather Service, Civil Air Patrol, and a wide variety of Non-Governmental groups such as American Red Cross, Salvation Army, and many others. It is on this experience and others that I base the following testimony.

I support the passage of HB 2805 and I trust that all of you can see your way clear to support it as well.

Amateur radio operators play a key role within community emergency services. The other testimony that you have heard and read support that statement. They do this at no cost to the public and at a great deal of personal expense in both equipment and time. They do it without the need for extensive infrastructure and yet can send messages across the county or around the world. Having reviewed the After Action Reports of many large scale response efforts I can attest that each and every one sites communications as a significant shortcoming. Amateur radio can help fill that gap.

To make sure that amateurs can provide this service they need to be able to erect antennas and practice this valuable skill. That is what this bill would ensure. Often ordinances and other

restrictions are put into place limiting antenna support structures because of the proliferation of other types of towers such as cellular, but they have the unintended consequence of restricting amateur radio structures as well. HB 2805 recognizes the need to exempt amateur structures so that amateurs can be prepared to support these emergency response efforts.

As others have pointed out HB 2805 would simply codify, at a state level, the federal policy of requiring that in exercising their traditional role of regulating land use, municipalities reasonably accommodate amateur radio services. Passage of HB 2805 will help emphasize to Kansas municipalities the importance of preserving the resource of amateur radio. At the same time, the bill will not unreasonably infringe upon our municipalities' ability to enact appropriate land use regulation.

I encourage this Committee's favorable action to recommend passage of the Kansas Emergency Communications Preservation Act, to help ensure that amateur radio operators will be available as a free, and vital resource to our communities in times when they are needed most.

Respectfully Submitted,

Matt May
Chairman,
Metropolitan Emergency Communications Council
9500 W 47th Ter
Merriam Kansas, 66203
913-384-6549

Utilities Committee

To the honorable committee members the Senate Utilities Committee, my name is Greg Hartnett an amateur radio operator in Miami County Kansas. I am asking you to pass HB2508, The Kansas Emergency Communications Preservation Act.

As a Federally licensed amateur radio service operator in Kansas, FCC # KC0YMH, I am involved in my county Amateur Radio Emergency Service (ARES) group, I have had FEMA National Incident Management System training and am active in weather spotting for the National Weather Service. I volunteer my time and equipment as a public services for my community.

ARES members train on a regular basis to be proficient in emergency communications. We have weekly "NETS" where all the members meet electronically via radio communications to ensure our equipment is operational. A training we had this fall stationed teams of ARES member at 30 hospitals throughout the Kansas City Metropolitan area to simulate a citywide disaster scenario where all communications were down. We had a Command Center set up at one of the hospitals and for over four hours communicated bed status for each hospital.

As you may know, with the proliferation of cell phone towers built since the 1980's has caused many county and city governments to pass zoning laws that unintentionally restrict the ability of radio amateurs to install effective antenna systems. This limits how far federally licensed amateur radio operators like myself can communicate during an emergency. In Miami County there is a limit of 35 feet for radio communications towers. I would really like to put up a tower at a height that would allow me to communicate farther in the event of an emergency situation. I live on 15 acres and have the room to safely put up a tower in excess of 35 feet.

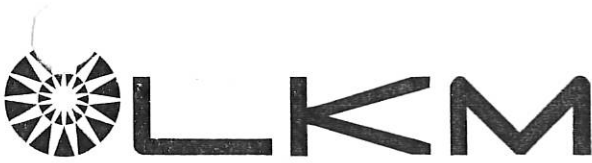
In 1985, at the American Radio Relay League's request, the Federal Communications Commission issued Memorandum Opinion and Order PRB-1. In PRB-1 the FCC pre-empted local zoning laws that did not make "reasonable accommodation" for amateur radio antennas. The PRB-1 pre-emption has been used effectively to change zoning laws all over the country, but it has required significant effort on the part of radio amateurs who have had to deal with this issue one jurisdiction at a time. Many local zoning boards don't give FCC regulations adequate consideration when making zoning decisions and across the county amateurs have found that state laws are a more effective tool for influencing local zoning regulations.

Many amateur radio operators take their own time and equipment to serve the great state of Kansas in times of need. A recent example would be the Greensburg, KS tornado, where 10 people died and the town was essentially destroyed. 50 Amateur radio operators volunteered to help organizations such as the Salvation Army and the American Red Cross communicate in and out of the disaster area for almost two weeks.

Please pass this important legislation to ensure effective communications when major disasters occur. **Please help us help you.**

Greg Hartnett
24545 Pflumm Rd.
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FCC# KC0YMH

Senate Utilities Committee
March 12, 2008
Attachment 12-1



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League of Kansas Municipalities

To: Senate Utilities
From: Mark Tomb, LKM
Date: March 12, 2008
Re: Opposition to HB 2805

On behalf of the 576 member cities of the League of Kansas Municipalities, thank you for the opportunity to offer comments regarding HB 2805. HB 2805 would establish the Kansas Emergency Communications Preservation Act.

LKM believes that existing federal regulations and Federal Communications Commission rulings sufficiently cover this subject matter and that state preemption is unnecessary. This legislation would also add definitions and language that would complicate a system that is currently working. Local governments have and must take into consideration existing federal regulations when creating ordinances or policies regarding these types of communication services. 47 C.F.R § 97 provides operators of these types of equipment reasonable accommodation and minimum practicable regulation by local government.

Federal regulations recognizes a balance of interests. It recognizes that local governments may preserve residential areas as livable neighborhoods by adopting zoning regulations that may forbid the construction and installation of certain types of antennas; while at the same time holding that such policies can not completely constrain amateur communications.

LKM is not supportive of state (or federal) legislation that would preempt local government's authority to regulate in order to protect the health, safety, and welfare of the public. LKM believes in self-governance by locally elected officials and that local issues and problems are best handled at the level of government closest to the citizens. For these reasons, we oppose HB 2805 and respectfully request that you do not recommend it favorably for passage.

Senate Utilities Committee
March 12, 2008
Attachment 13-1