

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

To: The Secretary,  
Federal Communications Commission

cc: Chairman William E. Kennard  
Commissioner Susan Ness  
Commissioner Michael Powell  
Commissioner Harold Furchgott-Roth  
Commissioner Gloria Tristani

**COMMENTS OF NO CODE INTERNATIONAL IN SUPPORT OF THE AMERICAN  
RADIO RELAY LEAGUE, INC.'S PETITION FOR RECONSIDERATION**

No Code International ("NCI"), on behalf of its Members and by its Board of Directors,  
hereby submits its Comments in Support of the Petition for Reconsideration filed by the  
American Radio Relay League, Inc. ("ARRL") in the above-captioned proceeding on December  
20, 1999 ("the Petition").

1. NCI is a not-for-profit organization of licensed radio amateurs, as well as those interested in amateur radio, but not yet licensed. NCI was founded in 1997 and is experiencing rapid growth, both within the U.S. and internationally. While NCI has an international membership and global goals with respect to various amateur regulatory matters, a majority of its members are currently U.S. licensed radio amateurs. NCI is an interested party in this proceeding.

2. NCI is very concerned about the adverse effects which the Amateur Radio Service suffers now, and will in all likelihood increasingly suffer in the future, due to the refusal, in the Order, DA-2569, released November 19, 1999 (“the Order”) of the Deputy Chief, Wireless Telecommunications Bureau (“WTB”), to extend and clarify the Commission’s preemptive authorities and intent as requested in the Petition for Rulemaking in the above-captioned proceeding, which was filed by the ARRL on February 7, 1996.

3. The refusal in the Order by the Deputy Chief of the WTB to amend section 97.15(b) of the Commission’s Rules [47 C.F.R. §97.15(b)] to clarify the Commission’s preemptive intent in certain respects relative to state and local regulation of amateur radio antennas, as requested by the ARRL in its Petition for Rulemaking, will perpetuate considerable harm on the ARS and will in the future, if not rectified, result in increasing and even more widespread harm to the amateur community’s ability to effectively provide the valuable public service and emergency communications services which are an important part of the Basis and Purpose of the ARS, as outlined in section 97.1 of the Commission’s Rules [47 C.F.R. §97.15(b)].<sup>1</sup>

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<sup>1</sup> Part 97.1(a) of the Commission’s Rules cites as the **first** of several important components of the regulatory “Basis and Purpose” for the existence of the Amateur Radio Service:

“Recognition *and enhancement* (*emphasis added*) of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.”

4. As pointed out by the ARRL in the instant Petition for Reconsideration, the delay involved in resolving the issues raised in the original Petition for Rulemaking has resulted in expenditure of large amounts of money in litigation over land use issues; confusion on the part of, and unnecessary conflicts with, land use regulators; and has severely hampered the ability of many licensed radio amateurs to conduct their chartered public service activities.

5. NCI concurs **wholeheartedly** with the **entirety** of Sections II, III, and IV of the ARRL's instant Petition for Reconsideration, **and hereby incorporates each and every assertion and citation contained therein by reference in these Comments.**

6. The inability of amateurs to install and maintain reasonable antenna systems<sup>2</sup> is becoming more and more widespread due to both unreasonable local zoning restrictions and Covenants, Conditions, and Restrictions ("CC&Rs") placed on the deeds to residential properties by developers, which routinely disallow the installation of any and all antennas.

7. It makes no sense for the Commission to take the position that it "has no authority" to preempt CC&Rs "because they are private contractual agreements" when the Commission has, in fact, already exercised such authority, as granted by Congress, in preempting such restrictions on direct broadcast satellite "mini-dishes" and antennae for over-the-air reception devices such as broadcast television and the Multichannel Multipoint Distribution Service ("MMDS").<sup>3</sup>

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<sup>2</sup> For an excellent summary of what constitutes a "reasonable antenna system" from a technical aspect, as well as some discussion of the misconceptions commonly relied on by local zoning boards in their decisions with respect to antenna height restrictions, the reader is referred to *Antenna Height and Communications Effectiveness – A Guide for City planners and Amateur Radio Operators (Second Edition)*, published by the ARRL, a copy of which is attached hereto as **Appendix A**.

<sup>3</sup> See *In re Preemption of Local Zoning Regulation of Satellite Earth Stations*, and *In re Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-The-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service*, 11 FCC Rcd. 19276 (1996).

8. Unreasonable zoning restrictions and CC&Rs are based primarily on zoning boards', developers', and homeowners associations' senses of aesthetics,<sup>4</sup> fear of radio frequency interference ("RFI") to poorly shielded and filtered consumer electronics devices<sup>5</sup>, and (generally unfounded) concerns about exposure to radio frequency ("RF") energy<sup>6</sup>, rather than on issues of legitimate local regulatory concern and authority and both unreasonable zoning restrictions and CC&Rs should be proactively and effectively preempted by the Commission.

9. If local zoning boards, through unreasonably restrictive regulations or excessive fees; or developers and homeowners associations, by the indiscriminate, blanket prohibition of all forms of antennae through CC&Rs; are permitted to thwart the ability of the Commission's licensees in the ARS to erect and maintain reasonable antenna systems, the public interest will be compromised.

10. NCI believes that the Commission has a public interest obligation, as well as a Congressional mandate, to act to protect the ability of its licensees in the ARS to effectively and fully perform the public service and emergency communications service duties established as one of the Commission's primary regulatory objectives for the ARS.<sup>7</sup>

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<sup>4</sup> "Aesthetics" **carried to the extreme, as practiced by many local zoning boards, developers, and homeowners associations**, flies in the face of the Commission's legitimate preemptory interest in assuring that its licensees in the ARS are able to effectively carry out the communications authorized by their licenses.

<sup>5</sup> Had the Commission acted, as requested in the past, to establish rules governing the vulnerability of consumer electronics devices to RF emissions which they were not intended to receive, this concern would not be as prevalent as it is today. However, the area of RF interference is not a legitimate area of local regulatory concern (that area having been reserved to the federal government, as represented by the Commission).

<sup>6</sup> The Commission has also established its authority over RF exposure limits and has promulgated Rules governing permissible RF exposure levels. Indeed, amateurs operating beyond certain power levels are required by the Commission's Rules to conduct an RF safety evaluation according to prescribed methods, and keep records relating thereto.

<sup>7</sup> To reiterate from Part 97.1(a):

"Recognition ***and enhancement*** (*emphasis added*) of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications."

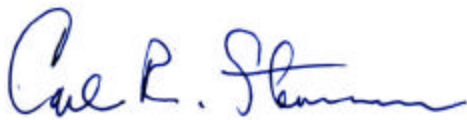
## Conclusion

NCI agrees with the ARRL that, in this case, the WTB erred in its decisions in the Order denying *in toto* the ARRL's Petition for Rulemaking of February 7, 1996 and that there is ample precedent and legal justification for the Commission to grant the relief requested by the ARRL in its Petition for Reconsideration.

If the Commission allows the Order to stand as is, we believe it will be abdicating its responsibility to the public interest, convenience, and necessity and acting contrary to both its own Basis and Purpose for the ARS as outlined in Part 97.1 of the Commission's Rules and the determination of Congress.<sup>8</sup>

We therefore respectfully join the ARRL in requesting that the Commission reconsider its denial of the ARRL's Petition for Rulemaking and, at the earliest possible time, both clarify its preemption of local zoning regulations and extend such preemptions to CC&Rs and other private land use restrictions as requested therein and specifically authorized by Congress.

Respectfully submitted,  
No-Code International



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(as delegated and approved by the Board as a whole)

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<sup>8</sup> Petition for Reconsideration of the ARRL at 6.