

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

In the Matter of )  
 )  
The American Radio Relay League's )  
"REQUEST FOR DECLARATORY RULING" ) RM-9259  
Titled "Compliance with Applicable Voluntary Band )  
Plans in the Amateur Radio Service" )

To: The Chief, Private Wireless Division  
Federal Communications Commission

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

**REPLY COMMENTS OF NO CODE INTERNATIONAL**

No Code International (NCI), on behalf of its Members, by its Board of Directors, and pursuant to the Commission's Public Notice in the above-captioned matter, hereby submits its reply comments in the above-captioned proceeding.

**I. INTRODUCTION**

1. NCI takes exception with the ARRL's "Comments" in this proceeding and asserts that they raise no new or substantive evidence to support the ARRL's original "Request for Declaratory Ruling" that prompted the Commission to open RM-9259.

2. NCI further maintains that, as stated by the preponderance of comment to date in this proceeding, the ARRL's requested outcome in this proceeding is totally unnecessary, is contrary to the Commission's deregulatory policies, would represent bad public policy, would promote stagnation in the Amateur Radio Service (ARS), and that this proceeding should be TERMINATED without further action by the Commission.

3. NCI also points out that the ARRL's "Comments" in this proceeding should be more correctly characterized as "Reply Comments" and the ARRL should not be afforded the opportunity to file further Reply Comments in this proceeding because such an opportunity would afford the ARRL an advantage not available to other interested parties in this Proceeding..

4. These themes will be more fully developed and addressed in the following sections of these Reply Comments.

II. THE ARRL HAS PROVIDED NO EVIDENCE OF THE NEED FOR ITS REQUESTED ACTION AND THE ENTIRE PROPOSAL PUT FORTH BY THE ARRL IS BOTH ILL-ADVISED AND UNNECESSARY. ADDITIONALLY, THE ARRL'S ASSERTION THAT THE COMMISSION HAS "MISIDENTIFIED" ITS REQUEST IS WITHOUT MERIT.

5. The ARRL asserts in the heading of Section III of its comments that "Voluntary band plans are indispensable in the Amateur Service and proper adherence thereto requires the Commission's support." Clearly, in this case "support" equals "force of the Commission's Rules" in the mind of the ARRL.

6. The ARRL has made absolutely no showing of evidence of any kind to support its implied claim that "non-compliance with voluntary band plans is a significant problem in the Amateur

Radio Service.” In fact, other than a vague statement from the minutes of an ARRL Board of Directors meeting that states that the ARRL Directors believe they have observed “... some notable deterioration in adherence to the plans ...” the ARRL has yet to offer any evidence whatsoever to support their implication that a problem exists.

7. Simply put, conventional wisdom dictates that “If there’s no problem, you don’t need a solution.” That the ARRL still deems it imperative to seek to force a “solution” to a non-existent “problem” despite an overwhelming outpouring of comments in opposition to its proposal should be noted by the Commission as an indicator of just how “representative” the ARRL is of the amateur community it purports to serve and represent.

8. Finally, NCI finds the statements made by the ARRL in its own “Comments” to be at odds with the ARRL's initial filing (the “Request for Declaratory Ruling). Indeed, the ARRL makes the following statements regarding bandplans: "Voluntary band plans should be voluntary, and adherence to them should remain voluntary." (Section III, Paragraph 7) and latter adds: "This does not require that any band plan become "mandatory" rather than voluntary." (Section III, Paragraph 8) NCI believes that the ARRL has, in its own “Comments,” contradicted the arguments it attempted to present in its initial filing.

9. The ARRL cannot “have it both ways,” either such “band plans” are merely unofficial recommendations, adherence thereto is voluntary, and flexibility of operation is inherent therein, or they carry the force of regulation and adherence thereto is mandatory.

10. By extension, if such “band plans” are not voluntary, or if operating outside of what is provided for in the band plan is a violation of the Commission’s rules, then the “band plans” are,

in fact, obligatory statements of what is and is not permissible. This appears to be the outcome which the ARRL actually seeks.

11. The ARRL purports to seek merely “an interpretation” of the Section 97.101(a) of the Commission’s rules, which reads as follows

97.101 General standards

(a.) In all respects not specifically covered by FCC Rules each amateur station must be operated in accordance with good engineering and good amateur practice.

12. The ARRL’s attempt to persuade the Commission to extend the meaning of this rather vague reference to “good amateur practice” in the manner requested can only be interpreted as a move to convert the voluntary nature of band plans to a mandatory requirement.

13. Since the “band plans” referred to by the ARRL prescribe recommended limitations for mode usage and operational modalities that are considerably more restrictive than the limitations currently imposed by the Commission’s Rules, applying the “good amateur practice” catch-all to make non-conformance with such “band plans” a violation of the Commission’s Rules is, in effect, a considerable extension of the restrictions imposed by the Commission’s Rules with respect to what modes and types of operation are permissible in what portions of the various amateur bands.

14. If such sweeping extensions of the Commission’s Rules do not merit treatment as a Petition for Rulemaking, it is unclear what the ARRL believes would merit such treatment. The Commission chose to treat this matter in an entirely appropriate context and should give no credence to the unwarranted criticism leveled by the ARRL.

III. THE ARRL'S "COMMENTS" IN THIS PROCEEDING ARE, IN FACT, "REPLY COMMENTS," AND SHOULD BE TREATED AS SUCH BY THE COMMISSION.

15. It is quite evident from even a cursory reading of the ARRL's recently-filed "Comments" that they are, in fact, "Reply Comments," since they provide no further substantive evidence in support of their original filing (their "Request for Declaratory Ruling"). Instead, the entire thrust of the ARRL's "Comments" is to criticize the Commission's handling of this matter and to attempt to refute the substantial body of comments filed in opposition to their request by questioning their objectivity and validity.

16. In light of this, it would seem appropriate for the Commission to treat this most recent filing by the ARRL for what it is: their Reply Comments, and deny the ARRL the benefit of a "second trip to the well."

17. This view is consistent with the concerns raised by Commissioner Tristani in her April 2, 1998 "Partial Dissent" in GC Docket No. 97-113, where she wisely raised concerns that the later filing deadline for comments afforded to electronic filers under the Report and Order in that proceeding would afford sophisticated electronic filers the opportunity of incorporating responses to the comments of others into their "Comments," thus giving such filers an additional reply opportunity not available to the general public.

18. While the ARRL, having retained counsel in Washington, may not have filed its "Comments" electronically, it is clear that their "Comments" are designed to "reply" to the body of opposing comments filed before the close of the public comment period (to which the ARRL's Washington council would have had ready access).

19. There is enough of a parallel between this situation and the concerns raised by Commissioner Tristani to justify that the Commission deem the ARRL's recently-filed "Comments" to be, in fact, their "Reply Comments" and disallow the ARRL the opportunity to enjoy a further reply opportunity that others are not afforded.

## VII. CONCLUSION AND RECOMMENDATIONS

20. NCI believes that this entire proceeding is the unfortunate result of the ARRL seeking to force-fit an unnecessary "solution" to a virtually non-existent "problem."

21. NCI respectfully requests that the Commission DENY the ARRL's Request for Declaratory Ruling and TERMINATE this Rulemaking proceeding with no further action.

22. NCI also respectfully requests that the Commission deem the already-filed "Comments" of the ARRL to be, in fact, their "Reply Comments" and to disallow the ARRL the advantage of an additional reply opportunity not available to other interested parties in this proceeding.

Respectfully submitted,

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Carl R. Stevenson, WA6VSE  
270 West Chestnut Street  
Macungie, PA 18062-1042  
wa6vse@fast.net

(for the Members and Directors of NCI as delegated by the Board of Directors)

CERTIFICATE OF SERVICE:

On April 21, 1998, the Commission assigned this item file number RM-9259 and established a 30 day preliminary comment period. (Public Notice Report #2269) The public comment period ended on May 21, 1998, with reply comments due 15 days later. Therefore these comments are timely filed.

On May 27, 1998, I mailed a true and accurate copy of this document (described as REPLY COMMENTS OF NO CODE INTERNATIONAL in RM-9259) to ARRL General Counsel Christopher D. Imlay, of the Law Firm of BOOTH, FRERET, IMLAY & TEPPER, P.C., 5101 Wisconsin Avenue, N.W., Suite 307, Washington, DC 20016 as required by Sections §1.47 and §1.405 of the Commission's Rules (47 C.F.R. §1.47, 47 C.F.R. §1.405)

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