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Statement for the Record
H.R. 1301, the Amateur Radio Parity Act
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On behalf of the more than 66 million Americans who live in community associations—often referred to as homeowners associations, planned communities, condominiums, or housing cooperatives—Community Associations Institute (CAI) submits the following statement concerning H.R. 1301, the Amateur Radio Parity Act, for the committee’s consideration.

CAI is the only nationwide membership organization dedicated to the community association model of homeownership. CAI members are homeowners, association board members, managing agents and business partners who work tirelessly to improve the community association model of housing. CAI members have a keen focus on homeowner and board member education, development and enforcement of best practices and ethical standards, and raising standards through credentialing and continuing education requirements for community association professionals. CAI’s more than 33,500 members are organized in more than 60 chapters.

The Community Association Model of Housing

Community associations are not-for-profit corporations organized under state law and established pursuant to a declaration of covenants. Community association

membership is mandatory and automatic, based on a person's ownership of real property subject to a declaration of covenants.

Duties of Community Association Boards

Community associations are governed by a volunteer board of directors, neighbors elected by neighbors, to manage the association's affairs pursuant to state law and the declaration of covenants. The responsibilities of a community association board may vary according to housing type (i.e. high-rise cooperative or planned community) and if the community is organized as a singular association or a series of semi-autonomous sub-associations within a master association.

In general, a community association board acts to maintain common community infrastructure such as a community's roads, sidewalks, bridges, culverts, parks, and street lighting. It is also common for community associations to contract for refuse collection and snow removal services. In a condominium or a cooperative, the association is additionally responsible for maintenance of the roofs, hallways, stairwells, balconies, and other critical building infrastructure while homeowners are typically responsible for interior maintenance of their units. Association boards also enforce the community's architectural standards.

Community Associations not Units of Government

Despite providing municipal-type services for owners and residents, community associations are not units of government, but are private entities. Community associations are neither vested with nor exercise authorities typically and routinely associated with state and local government. Rather, most community association boards focus on stability of the association's finances, maintenance of common property, and enforcement of the association's covenants, conditions, and restrictions (CC&Rs).

Residents Report Satisfaction with their Community Association

In 2014, Public Opinion Strategies conducted a nationwide survey of community association homeowners to determine resident satisfaction with community associations.¹ According to the survey results, 90 percent of homeowners rated their community association experience as positive (64 percent) or neutral (26 percent). More than 82 percent of residents stated they get along well with their neighbors and more than 90 percent of residents said they are on friendly terms with their association board. These data are similar to historical data on association homeowner satisfaction.

¹ [Americans Grade Their Associations, Board Members, and Community Managers, 2014: Foundation for Community Association Research](#)

Overwhelming Opposition to New Government Regulation of Community Associations

The 2014 Public Opinion Strategies survey asked respondents if they would prefer more or less government regulation of their association. An overwhelming 86 percent of respondents said they want less or no additional government control over their neighborhood. Given the local nature of community associations and the neighborhoods they serve, it is not surprising that homeowners believe their association needs less government regulation and intervention rather than more regulation and intervention.

Overview of FCC Preemption of State and Local Laws & Exemption for Private Land Use Agreements

H.R. 1301 applies the Federal Communications Commission's (FCC or Commission) broad preemption of state and local government laws and ordinances pertaining to amateur service communications to community association CC&Rs. Section 3 of H.R. 1301 directs the FCC to amend its regulations at 47 CFR § 97.15(b) to prohibit the application of any private land use restriction to amateur service communications that does not comply with the Commission's "reasonable accommodation" standard applicable to state and local governments.²

Amateur Operator Objections to Location, Height, & Aesthetic Guidelines

The Commission's "reasonable accommodation" standard, often referenced as PRB-1, preempts state and local laws and ordinances that fail to provide an amateur services licensee opportunity to deploy an effective amateur services station. The PRB-1 standard was adopted by the Commission in response to amateur radio operator objections to municipal land regulations requiring that amateur station antennas be located in specific locations (a side or rear yard) and be subject to height limitations.

Amateur operators objected to these restrictions, claiming the restrictions precluded amateur service communications. Amateur operators argued their ability to effectively broadcast is directly related to the location and height of an amateur station antenna. Amateur operators also objected to permitting fees and restrictions adopted for aesthetic purposes. In describing these objections, the Commission wrote, "*...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*

² PRB-1—Memorandum Opinion and Order (FCC 85-506): *Federal preemption of state and Local Regulations Pertaining to Amateur Radio Facilities*, September 16, 1985.

people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.”³

Preemption of Local Land Regulations & Accommodation of Effective Communications

The Commission decided in favor of amateur radio operators on the question of local land use regulation, a traditional authority of state and local government. Noting that local governments had a continuing interest in land use policy, the Commission opined, *“The cornerstone on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.”*⁴

Notwithstanding the stated goal of accommodating the interests of both municipalities and amateur radio operators, in clarifying the extent of its preemption of state and local laws and ordinances the FCC subordinated the interests of state and local governments to those of the amateur licensee’s. The Commission wrote—

*“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...local regulations which involve placement, screening or height of antennas [sic.] based on health, safety, or aesthetic considerations must be crafted to accommodate reasonable amateur communications and to represent the minimum practicable regulation to accomplish the local authority’s legitimate purpose.”*⁵

The Commission expanded on this standard in a subsequent order concerning the PRB-1 reasonable accommodation standard. The Commission expressly rejected an interpretation of PRB-1 that local entities were only required to balance local interests with the federal interest in amateur service communications. The Commission restated the PRB-1 reasonable accommodation standard placing a burden on the local entity seeking to enforce a restriction to demonstrate the restriction is the minimum burden imposed on an amateur operator in pursuit of a legitimate purpose. The Commission wrote, *“Given this express Commission language, it is clear that a “balancing of interests” approach is not appropriate in this context.”*⁶ Courts have since interpreted

³ PRB-1, paragraph 8.

⁴ *Ibid.*, paragraph 22.

⁵ *Ibid.*, paragraph 25.

⁶ Order (FCC 99-2569) PRB-1 (1999), paragraph 7.

the PRB-1 standard as imposing certain burdens of process and proof on localities seeking to enforce a restriction concerning amateur service communications.⁷

Private Land Use Agreements and Leases Protected from Preemption

The Commission did not apply the PRB-1 order to private land use restrictions and covenants, writing, "*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.*"⁸ The Commission restated its decision not to preempt the private agreements of land owners as footnote 6 to the PRB-1 order, stating "*We reiterate 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.*"⁹

FCC Repeatedly Rejects Expansion of PRB-1 to Private Land Use Agreements

Amateur radio operators have sought to require the FCC to extend its preemption of land use regulations to encompass private land use agreements. The Commission has on at least three occasions declined to do so.

- In 1999 the Commission responded to a petition to extend the PRB-1 ruling to private land use agreements by concluding, "*...we are not persuaded by the Petition or the comments in support thereof that specific rule provisions*

⁷ In *Williams v. City of Columbia*, 707 F. Supp. 207 (D.S.C. 1989), the court raised the issue of balancing of interests between local governments and the federal government. The court wrote, "*Perhaps more important, federal judicial encroachment of an area of almost exclusive state and local control should not be lightly undertaken. As a result, local zoning boards are best suited to strike the proper balance between the federal interests outlined in PRB-1 and the strong local interests in regulating land use and zoning.*"

In *Pentel v. City of Mendota Heights, Minnesota*, 13 F. 3d 1261 (8th Cir. 1994), the 8th circuit took a different approach to the question of reasonable accommodation, determining that Mendota Heights failed to reasonably accommodate plaintiff Pentel by denying a variance request without creating a record of fact, providing justifications for its denial, and failing to inform plaintiff of actions that could be taken to obtain approval.

The FCC's 1999 clarification that the "balancing of interests" approach was not consistent with the preemption of PRB-1 has led to other courts following the Pentel test for reasonable accommodation. In *Boscher v. Township of Algoma*, 246 F. Supp. 2d 791 (W.D. Mich. 2003), the court determined that Algoma complied with the PRB-1 reasonable accommodation by (1) having a "firm understanding of the requirements of PRB-1"; (2) having "attempted to compromise with plaintiff"; and (3) retained the services of an professional consultant to evaluate plaintiff's application.

⁸ PRB-1 (1985), paragraph 7.

⁹ *Ibid.*, paragraph 25, footnote 6.

bringing the private restrictive covenants within the ambit of PRB-1 are necessary or appropriate at this time.”¹⁰

- In 2000, the Commission denied a reconsideration request, writing “*we believe that the PRB-1 ruling correctly reflects the Commission’s preemption policy in the amateur radio context.*”¹¹
- In 2001, the Commission again denied a reconsideration request, pointedly stating, “*...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.*”¹²

2012 FCC Report Reinforces Prior Determinations, States No Need for Legislation

The Middle Class Tax Relief and Job Creation Act of 2012 directed the Commission to undertake a study of, among other things, the impediments private land use restrictions present to amateur service communications.¹³ The Commission was directed to identify “impediments to enhanced amateur radio service communications, such as private land use restrictions on residential antenna installations...” and to submit to Congress “...recommendations regarding the removal of such impediments.”¹⁴

With regard to private land use restrictions acting as an impediment to enhanced amateur services communications, the Commission wrote—

“Moreover, while commenters suggest that private land use restrictions have become more common, our review of the record does not indicate that amateur operators are unable to find homes that are not subject to such restrictions. Therefore, at this time, we do not see a compelling reason for the Commission to revisit its previous determinations that preemption should not extend to CC&Rs.”¹⁵

The Commission explicitly stated that no additional legislative authority or action by Congress on the matter of amateur service communications and private land use restrictions is necessary. The Commission wrote—

¹⁰ PRB-1 (1999), paragraph 6.

¹¹ Order on Reconsideration (RM 8763) PRB-1 (2000 – Reconsideration), paragraph 6.

¹² Order on Reconsideration (RM 8763) PRB-1 (2001), paragraph 9.

¹³ P.L. 112-96, Section 6414.

¹⁴ P.L. 112-96, Section 6414(b)(2)(A) and (B).

¹⁵ GN Docket No 12-91—Uses and Capabilities of Amateur Radio Service Communications in Emergencies and Disaster Relief: Report to Congress Pursuant to Section 6414 of the Middle Class Tax Relief and Job Creation Act of 2012 (August 2012), paragraph 39.

“As noted above, the Commission has already preempted state and local regulations that do not reasonably accommodate amateur radio communications and that do not constitute the minimum practical regulations to accomplish the local authority’s legitimate purpose...Consequently, we do not believe that Congressional action is necessary to address any of these issues.”¹⁶

H.R. 1301 Overrides Private Contracts

A fair reading of the record of FCC consideration of its PRB-1 ruling and subsequent rulings, reconsiderations, and reports clearly shows the Commission has great respect for private agreements valid under state law and freely entered into by the respective parties. H.R. 1301 abandons the Commission’s historical regulatory restraint by treating community association covenants as if these legal instruments were imposed by third parties on unsuspecting amateur radio operators.

Disclosure of Community Standards Prior to Purchase

CAI members strongly desire that community associations be welcoming communities in demand by all consumers, including amateur radio operators. This is a leading reason behind CAI members’ strong support of and advocacy for statutes that provide meaningful and actionable disclosure of all association rules and guidelines prior to purchase. CAI members support state statutes that ensure such disclosure occurs well in advance of closing and that a consumer has the right to cancel a purchase contract without penalty on the basis of their review of a community’s CC&Rs.

It does no party any benefit if a homeowner does not have a clear understanding of a community’s requirements prior to purchasing or leasing a home in a community association. These prior disclosure requirements under law mean amateur radio operators are similarly situated with all other homeowners or potential purchasers.

Owners in a community association each had the opportunity to review community rules and by closing the real estate transaction became contractually bound to their community and each one of their neighbors to abide by community standards. Every licensee has (A Priori) an opportunity to know and understand the restrictions related to their property prior to purchase.

Architectural Standards and Variance Requests

Community association boards understand the reality that it is unlikely a community’s rules and architectural standards will anticipate every potential need of a homeowner.

¹⁶ Report to Congress (August 2012), paragraph 40.

Accordingly, the vast majority of associations will consider variance requests to architectural standards through an architectural review process.

The architectural review process varies based on the form of association, but the underlying goal is the same. Property owners made the decision to purchase their home with the clear understanding that property standards will be enforced to the community's general benefit. In almost every association modifications to the exterior of property or modifications visible from a unit's exterior are subject to an architectural review process.

Most community associations will consider an amateur radio operator's request to install an external antenna or tower through the architectural review process. As has been discussed, the architectural review process applies to all owners and residents evenly and applies to all external modifications, visible or otherwise. An amateur radio operator submitting a request for an external tower and antenna is more likely to receive approval for the external structures if the request is made consistent with the community's standards. An amateur radio operator who fails to adhere to a community's standards is less likely to receive approval.

H.R. 1301 Overrides Covenants that Apply to Amateur Radio

H.R. 1301 is a clear preemption of lawful agreements between private parties over the use of privately owned land. H.R. 1301 vitiates portions of community association CC&Rs that prohibit broadcasting from within a community. H.R. 1301 will further vitiate portions of covenants that do not comply with the FCC's "reasonable accommodation" standard. This latter preemption supplants the existing process the majority of community associations use to review and manage requests to install external antenna for amateur radio broadcasting.

The preemption in H.R. 1301 directly affects the decision making process of almost every community association by forcing the association to adopt a federal policy intended for local governments. Congress is contemplating a very aggressive intrusion at the most micro level of civil society, imposing its preferences onto private parties who have freely and lawfully entered into contract concerning land use.

Congress is not contemplating such action to correct an historical wrong or address a national emergency. The legislation does not address any federal interest sufficiently compelling to justify such interference with state sovereignty over land use policy and common contract law.¹⁷

¹⁷ Report to Congress (August 2012), paragraph 39.

Congress is overriding private contracts for the benefit of a hobby activity.¹⁸ CAI members believe this intrusion into the workings of community associations is unjustified and violates the rights and expectations of all other community residents.

With more than 66 million Americans living in community associations, this type of federal intervention paves the way for interest groups seeking special exceptions from their contractual obligation with their local community association. Community associations are creatures of state law through the Uniform Common Interest Ownership Act, well-vetted balanced legislation governing the development, administration and management of state-incorporated community associations. .

Community Associations and Amateur Radio

In late 2014, CAI members were surveyed concerning amateur radio to determine common community rules and approaches to accommodating amateur radio. Data was collected from approximately 1,100 respondents across 46 states covering a minimum of 535,000 housing units. Respondents also indicated a wide variety of housing type, reporting data from condominium associations, housing cooperatives, planned communities, townhome communities, and communities with a mixture of housing types.

Survey Finding: Majority of Associations do not Preclude Amateur Communications

Approximately 35 percent of respondents indicated a community prohibition on external installation of non-OTARD compliant antennas or amateur service communications. Approximately 40 percent of respondents reported installation of external antenna or towers would require prior approval and compliance with architectural standards. Approximately 25 percent of respondents indicated their communities' governing documents made no reference whatsoever to amateur radio or amateur radio towers and antennas.

Survey Finding: Majority of Associations Have no Record of Amateur Radio Denials

The majority of respondents indicated that the communities in question had not denied amateur radio antenna installations or had no record of such a denial. Combined, this accounted for approximately 90 percent of respondents, with 63 percent reporting no denials and 27 percent either unsure or having no record of a denial.

¹⁸ The American Radio Relay League writes that "Amateur Radio (ham radio) is a popular hobby and service that brings people, electronics and communication together." See <http://www.arrl.org/what-is-ham-radio> (visited January 11, 2016).

Survey Finding: Strong Support for Consideration of External Antenna Requests through Association Process

An overwhelming 77 percent of respondents indicated that installation of external amateur radio antennas and towers should be subject to community rules. Only 10 percent of respondents indicated a preference that architectural standards should not apply to external amateur radio antennas and towers.

Support for community architectural standards was almost unanimous—95 percent of respondents agreed their community’s architectural guidelines are important and protect the value of their home.

Rights of Property Owners, Importance of Local Control, & H.R. 1301

Survey data explain why CAI members do not believe H.R. 1301, in its current form, is good public policy or even necessary. Notwithstanding this belief, CAI members recognize federal ownership and control of the radio spectrum. CAI members acknowledge the stated federal interest in the amateur communication services. CAI members further understand the view of many in the U.S. House of Representatives and of some in the U.S. Senate that community associations should work affirmatively to offer greater support for the amateur communication services.¹⁹

In recognition of these views and consistent with the goal of ensuring community associations are welcoming to all individuals and families, CAI members would not oppose legislation limiting the ability of community associations to preclude amateur service communications through prohibitions on such broadcasting included in a declaration of covenants or association guideline or rule.

Beyond this, CAI members strongly believe the role of association homeowners and residents to establish and enforce architectural, maintenance, and safety standards must be retained. These basic association functions should not be usurped by the federal government.

The FCC has previously voiced concern that application of its “reasonable accommodation” standard to community associations would not be as smooth as some suggest. The Commission wrote—

¹⁹ CAI members also acknowledge encouragement of the FCC that community associations work to accommodate the interest of amateur radio operators.

*"We note that ARRL is proposing a policy of reasonable accommodation, as opposed to the total preemption imposed in the OTARD proceeding. **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.**"²⁰*

Common Ground: Suggested Amendments H.R. 1301

To ensure local, homeowner control over community association matters, CAI members urge that H.R. 1301 be further amended to reinforce the association role in determining and enforcing architectural standards that may apply to amateur service communications and installation of amateur radio antennas and towers. This is consistent with the concepts of local control over land use and established association law and jurisprudence in the states.

CAI members believe the following elements are necessary to protect the legitimate interests of all association homeowners and residents when developing and enforcing architectural standards that may apply to amateur service communications—

1. Prior notice from an amateur service licensee of intent to install an external antenna, tower, or other apparatus necessary for carrying on amateur service communications;
2. Association authority to enjoin installation of any antenna, tower, or other apparatus necessary for carrying on amateur service communications on commonly owned property or property maintained by the association;
3. Association authority to establish written rules concerning safety, height, location, size, and installation requirements for external antennas, towers, or other apparatus necessary for carrying on amateur service communications;
4. Accommodation of the interests of all homeowners and residents, including those of an amateur services licensee, in establishment of any written rule related, but not limited to, sight easements, interference with air, light, and open space, or the permitted height of principal structures in relation to external antennas, towers, or other apparatus necessary for carrying on amateur service communications; and
5. Direction that an association may not adopt and enforce written rules that by intent or effect preclude amateur service communications.
6. Construction or modification of a structure must be in compliance with all applicable building codes and engineering standards.

²⁰ PRB-1 (2001), paragraph 8 (emphasis added).

7. The licensee must provide proof of appropriate risk coverage for all external devices and structures.

CAI members do not oppose amateur service communications and appreciate the role of amateur service operators in times of national or local emergency. Nevertheless, CAI members strongly support the long-standing principles of state and local control of land use policies and the right of parties to lawfully contract.

Conclusion

CAI members respectfully, but strongly, urge the Committee to consider the practical consequences of substituting the wisdom of the Congress for that of neighbors in such a matter. Community association residents have for many decades shown that neighbors can manage local issues like architectural standards without threat, interference, or assistance from the Congress or other instrumentality of the federal government.

Amateur radio operators should be encouraged to follow the same procedures as all other residents of the association in seeking a variance from association guidelines. Taking the time to meet the association's request guidelines, providing an accurate description of the actual variance sought, communicating with neighbors, and obtaining approval before beginning the installation of an external communications device are will greatly improve an amateur radio operator's opportunity to secure approval of their request. These are common steps that must be taken to gain approval for most variance requests and do not apply solely to amateur radio operators. CAI urges amateur radio operators to take a constructive rather than combative approach with their neighbors. Community associations work best when owners come together to manage and support the operations and activities in their community for the benefit of all members of the community.

CAI members look forward to additional productive conversations with organizations representing the interests of amateur service licensees and this Committee to ensure amateur radio operators have opportunity to broadcast from community associations and to preserve the rights under contract of property owners to manage, protect, and preserve their property interests.