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Clarity on Parity

"There is growing support in Congress for the Amateur Radio Parity Act, but opponents are becoming more vocal."

As discussed briefly in the "Happenings" lead story this month, representatives of community associations — sensing a threat to their arbitrary power over property owners in their domains — are trying to mount a defense against the Amateur Radio Parity Act, H.R. 1301 in the House and S. 1685 in the Senate. The bills seek to extend the Federal Communications Commission's limited preemption of state and local land-use regulations of Amateur Radio station antennas to the growing residential areas that are subject to private restrictions — in other words, to give homeowners in those communities the same access to effective Amateur Radio communication as is now enjoyed elsewhere. The texts of the two bills are identical, so we will refer to them as a single bill.

Arguments being offered by the bill's opponents are simply wrong. To address them, and to separate fact from fiction, let's look at the bill itself and what it would and would not do.

First, some history. In 1985, the Federal Communications Commission, recognizing that there was a strong federal interest in effective Amateur Radio communication from residences, adopted a policy of limited preemption of state and local regulations of Amateur Radio station antennas. Those regulations:

1)Must not preclude Amateur Radio communications;

2)Must reasonably accommodate such communications; and

3)Must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose.

This policy, known as PRB-1 because it originated within what was then known as the Private Radio Bureau of the FCC, is now incorporated in Title 47 of the Code of Federal Regulations, Section 97.15(b).

In the intervening 30 years, private land-use restrictions have become increasingly common. About 65 million people now live without the due process protections that governmental land-use authorities must provide. According to the community association industry itself, 90 percent of new residential construction is subject to these restrictions. In areas with new, large-scale residential construction, the restrictions on antennas are now so pervasive that they prevent effective communication from residences in large portions of the country. Homeowners and prospective purchasers have little or no choice but to accept limitations on what they can do with their own property, no leverage to change them, and no recourse in the face of arbitrary decisions.

The Amateur Radio Parity Act is simple. It recognizes the fact that whether a residence is subject only to state and local regulations or also to private land-use restrictions, the federal interest in effective Amateur Radio communications is the same. The bill just instructs the FCC to extend its time-tested "reasonable accommodation" policy to private land-use restrictions. That's all.

Contrary to the representations of its opponents, the bill does not do any of the following:

- It does not create new federal policy regarding outdoor antennas. Congress and the FCC already have acted to prohibit restrictions that prevent the installation of direct-to-home satellite dishes, TV antennas, and customer-end wireless broadband antennas. For example, if you want to receive free, over-the-air television service and you need an outdoor antenna to do so, you are entitled to have one. No community association can tell you otherwise.
- It does not prohibit community association review of proposed Amateur Radio antenna installations. It simply calls for the provision of reasonable accommodation and limits restrictions to what may be necessary to accomplish the association's legitimate purposes, such as safety and aesthetics. Prior approval of the association still can be required, just as in the case of municipal land-use regulation.
- It does not mandate that a particular size, height, or configuration of antenna be permitted. As long as a size and placement restriction does not constitute a prohibition, but reasonably accommodates Amateur Radio communication, and provided that the restriction is necessary to accomplish a legitimate purpose, it will be allowed.

Claims that the bill will do any of these things are simply wrong, and are either misunderstandings of the plain language of the bill or deliberate misrepresentations.

Here are some examples of such misstatements:

"If you don't want 75-foot towers throughout your community, you must contact your Members of Congress today." (Yet, while painting a mental picture of a forest of towers overshadowing a subdivision, the same organization acknowledges that radio amateurs are a "very small set of homeowners.")

"If the legislation passes, community associations would not be able to require prior approval for 70-foot ham radio towers nor would community associations have the ability to create reasonable processes and aesthetic guidelines." (It will come as news to municipal land-use agencies that the permit processes they have been following for the past 3 decades are unlawful.)

Then there is the scare tactic: "[Radio amateurs] do not need permanent equipment at their residence; especially towers and antennas that pose a health and safety risk to their neighbors." (Ensuring safety is a legitimate regulatory purpose. As for health risks, amateur stations are subject to the FCC's RF exposure regulations.)

As we went to press, H.R. 1301 had 97 cosponsors in addition to the sponsor, Rep. Adam Kinzinger of Illinois. S. 1685 is sponsored by Senator Roger Wicker of Mississippi with Senator Richard Blumenthal of Connecticut as the original cosponsor. The ARRL is working hard to build additional support. If you have not already done so, please help. Complete information about what you can do is available at **www.arrl.org/amateur-radio-parity-act**.