



## It Seems to Us

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# Restrictive Covenants: The Next Step

*“The FCC report to Congress on impediments to enhanced Amateur Radio disaster and emergency communications was not everything we had hoped for, but it has laid the groundwork for us to make our own case on Capitol Hill for relief from restrictive covenants.”*

Last August this page was devoted to a recap of the ARRL's persistent efforts to persuade the FCC that the federal interest in Amateur Radio stations having effective antennas is as great in residential areas that are subject to restrictive covenants as in areas that are subject only to state and local land use regulation. In 1985 the Commission declared a policy of limited preemption of state and local regulation that requires reasonable accommodation of amateur station antenna structures. However, it declined to extend that policy to private land use restrictions (covenants, conditions and restrictions, or CC&Rs). Since that time such restrictions have become almost ubiquitous in new residential construction.

Early last year we achieved a breakthrough in the form of a provision in Public Law 112-96 that required the FCC to study and report to Congress on the uses and capabilities of Amateur Radio communications in emergencies and disaster relief. Congress directed that the report identify impediments to such communications and make recommendations regarding their removal and specifically mentioned “the effects of unreasonable or unnecessary private land use restrictions on residential antenna installations.” In April 2012 the FCC opened a docket to collect public input and in August released a 15-page report with its summary and analysis of the responses.

The FCC's report amply documents the capabilities and value of the Amateur Radio community in emergency response situations. It identifies several ways in which the Department of Homeland Security, state, local and tribal emergency management authorities, and Amateur Radio emergency communications organizations might be able to enhance this value through mutual cooperation. It notes that some of the Commission's own rules might represent unnecessary impediments, but that these can be addressed through the normal rulemaking process without Congressional action. The report concludes:

The amateur radio community and the emergency response and disaster communications communities all agree that amateur radio can be of great value in emergency response situations. Amateur radio carries with it a wide range of advantages that allow it to supplement other emergency communications activities during disasters. This has been demonstrated time and again in a wide variety of emergency and disaster situations. Amateur radio emergency communications require not only stations in a position to originate the emergency message, but also an alternative to the commercial communications infrastructure impacted by the emergency. This alternative infrastructure is the network of amateur radio operators and their stations that relay messages, build and maintain repeater stations and repeater networks, operate HF message networks to send messages greater distances than are practical with mobile or transportable transmitters, and develop new technologies to improve the reliability of these networks.

However, the report was disappointing in one major respect: In a single sentence it dismissed the evidence presented by the ARRL and

others that clearly demonstrated restrictive covenants are a growing problem, leaving amateurs in large and growing areas of the country with no practical choice but to live under arbitrary, non-negotiable restrictions on their antenna installations. Without citing any contrary evidence the Commission simply concluded, “...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.” With that, the Commission decided not to revisit its earlier decisions to not preempt CC&Rs.

While it would have been nice had the FCC reviewed the evidence and decided to act on its own initiative, we really didn't expect that to happen. As far back as 2001 the Commission signaled its desire to avoid making the decision by saying, “...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.” In the ensuing decade the ARRL repeatedly sought such an instruction from Congress. Bills were introduced in the 107th, 108th and 109th Congresses but failed to gain any traction. In 2008 the ARRL decided to tackle the issue in two steps, the first being to ask Congress simply to mandate a study of the issue. Such a bill made it through the Senate the following year but died without action in the House. Finally, early in 2012 our study bill made it into a larger and essential piece of legislation and was signed into law.

So, step one is completed. While the FCC's brief report to Congress concludes there is no compelling reason for the Commission to take matters into its own hands, it reiterates that it will “expeditiously act” to fulfill a Congressional directive. The evidence to support such a directive is now part of the public record in the form of the ARRL's 128-page filing and those of others. We now move to step two.

By the time this issue of *QST* reaches members an ARRL team will have begun the process of visiting key players on Capitol Hill. A briefing paper has been prepared that lays out the problem and argues, we hope persuasively, that Congressional action is both necessary and appropriate. One point in our favor is that Congress has already declared by Joint Resolution (Public Law 103-408) that “reasonable accommodation should be made for the effective operation of amateur radio from residences, private vehicles and public areas.”

As our efforts on the Hill move forward we will be asking ARRL members who are constituents of key legislators to contact them and ask for their support. By working together, we can get this done.

*David Sumner, K1ZZ*