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

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Spectrum Policy Task Force Report	)	**ET Docket No. 02-135**
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COMMENTS OF MICHAEL H. ERDMAN

I, Michael H. Erdman, an Amateur Radio Service licensee, hereby submit my comments on the Federal Communications Commission("FCC" or "Commission")'s Spectrum Policy Task Force ("Task Force") Report dated November 2002 ("Report").

INTRODUCTION

1. In the event the Commission accepts the Task Force's recommendation that its policies should "evolve with the consumer-driven evolution of new wireless technologies," which will likely include adopting market-oriented regulatory models, it is imperative that notwithstanding such policy revisions, the Commission also take notice of the Report's advisory to "provide adequate spectrum resources to public safety entities." Report at p. 11. Specifically, among the Task Force's policy recommendations are to "[c]ontinue to dedicate some spectrum on a command-and-control basis for public safety use." Report at p. 65, item 26. I encourage the Commission, in considering its spectrum policies going forward in light of the Report and subsequent comments, to consider the unique role the Amateur Radio Service has had, and continues to have, in the provision of public safety communications services at essentially no cost to the public, and to continue to regulate the provision and maintenance of radio spectrum for the Amateur Radio

Service pursuant to the same command-and-control model that the Commission has successfully utilized to govern this service for decades.

THE AMATEUR RADIO SERVICE

2. As the Commission is well aware, the Amateur Radio Service permits licensees, who have successfully completed one or more written examinations relating to radio theory and practice, and in some cases demonstrated proficiency with the International Morse Code, based upon license class, to communicate, subject to FCC regulations established in Part 97, with other amateur radio operators located in the U.S. and abroad.

3. As elaborated upon below, one of the main and most recognized, purposes of the Amateur Radio Service is the provision of communication services in the event of local, regional, national or international disasters or emergencies when "regular" modes of communications, be they wired or wireless, are rendered unavailable for an indefinite period of time. Amateur radio licensees provide such services using their own equipment, and without any compensation whatsoever. Attesting to their ingenuity, in recent years Amateur Radio Service licensees have pursued a variety of forms of digital communications and leveraged the power of the Internet to expand on their ability to communicate with other licensees around town and around the globe. Amateur Radio Service licensees operate on land, at sea, and in the air. They operate in urban and rural setting alike throughout our country. And they have proven their willingness to volunteer, around the clock if needed, in times of local or national emergency. The newspapers were recently full of accounts of the public services rendered by Amateur Radio Service licensees immediately after the terrorist attacks that struck our country on

September 11, 2001, unequivocally demonstrating the Amateur Radio Service's usefulness to homeland security efforts.

4. Amateur Radio Service licensees are in no position to render these services to the public without sufficient and appropriate allocations of radio spectrum. Licensees are dependent upon a variety of bandwidth allocations, given the variety of time periods and distances involved in emergency communications, the propagation of the various bands, and congestion and interference from other users of the radio spectrum, including commercial and unlicensed users. The spectrum is a natural resource that has been ably administered by the Commission for decades, and while certain policy revisions may be appropriate in light of technological advances, I submit that the Commission's past practice of regulating the radio spectrum allocated to the Amateur Radio Service using the command-and-control type mechanism remains appropriate and essential to the survival of the Amateur Radio Service.

5. Command-and-control regulation will guarantee that the Amateur Radio Service will continue to have unfettered access to the radio spectrum necessary for the provision of the public service described herein, and bypass regulations more properly reserved for commercial interests, and unlicensed, experimental usage of the radio spectrum. The Amateur Radio Service is in no position to (1) compete with commercial interests, particularly if governed under an exclusive use model, given its stated and recognized purpose of serving the public interest at no cost to the taxpayer or the general public which benefits from its continued existence, or (2) communicate reliably and effectively in the midst of unlicensed transmissions that would rule spectrum governed under the commons model. In order for the Amateur Radio Service to be in a position to continue

rendering effective public service, the FCC must exempt it from the alternative methodologies discussed by the Task Force, and utilize command-and-control regulation in regulating the Amateur Radio Service.

COMMAND-AND-CONTROL REGULATION AND THE AMATEUR RADIO SERVICE

6. While discussing alternative models, the Task Force concludes that command-and-control regulation will still have a place in certain circumstances, particularly where such paradigm is necessary to accomplish important public interest objectives such as public safety uses and international harmonization. "[T]he Task Force recognizes that continued use of this approach may be required in situations where prescribing spectrum use by regulation is necessary to accomplish compelling public interest objectives . . . [i]t is . . . critical to distinguish between special interest and the public interest, establishing a high bar for any service to clear prior to receiving an exemption." Report at p. 41.

7. "In general, command-and-control regulation should be reserved only for spectrum uses that provide clear, non-market public interest benefits or that require regulatory prescription to avoid market failure." The Report cites public safety among other examples. Report at p. 41. The Amateur Radio Service fits this definition precisely – offering clear, non-market public interest benefits as evidenced herein, and requiring such regulation to avoid market failure. The latter point is true, given, admittedly, that Amateur Radio Service licensees are in no position, either individually or collectively, to compete with the resources possessed by commercial interests in order to retain, in an open market, the spectrum necessary to provide their unique public service. Relating to this point, the Report acknowledges that "[p]ublic safety spectrum users also typically have different funding mechanisms, are inherently more budget constrained, and have

longer equipment replacement cycles than commercial users," and that "[s]ome spectrum should continue to be dedicated on a command-and-control basis for public safety use."[1] Most importantly,

> the Task Force recommends that spectrum currently set aside for public safety use remain subject to the command-and-control model. Eventually, if the cost of spectrum is driven down by enhancing access and reducing scarcity, it is possible that public safety users could acquire spectrum in the market on the same basis as non-public safety users, but these conditions do not exist currently and should not format he basis for meeting the core spectrum needs of public safety entities.

Report at p. 43.

8. In implementing any new policies, particularly with respect to spectrum that is already occupied, appropriate transitional mechanisms should be employed to avoid degradation of existing uses by the Amateur Radio Service. As the Report acknowledges, "[i]n some limited instances . . . there may be particular types of systems or devices, public safety for example, that require more direct regulatory intervention . . . because the marketplace may not independently encourage such compatibility." Report at p. 22. Federal statutes already embody this policy in a general sense as it relates to Amateur Radio Service licensees. See 47 U.S.C. §923(c)(1)(C)(iii) (Identification of reallocable frequencies – Criteria for Identification) ("seek to avoid excessive disruption of existing use of Federal Government frequencies by amateur radio licensees.); 47 U.S.C. §924(b)(2)(E) (Withdrawal or limitation of assignment to federal Government

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[1] See Remarks of Commissioner Abernathy Before the Cato Institute Technology & Society Conference, Nov. 14, 2002 as they relate to auction exemptions:

> Auctioning also requires us to address the auction exemptions . . . [t]here should be auction-exempt spectrum specifically designated for public safety. . . .. Unfortunately, there has been a tendency within the FCC to feel compelled to auction everything. . . while I believe auctions do offer an efficient rights distribution mechanism, it does not mean all auctions all the time.

stations – Grounds for Substitution) (substitution where "the reassignment will disrupt the existing use of a Federal Government band of frequencies by amateur radio licensees.").

JUDICIAL RECOGNITION OF AMATUER RADIO SERVICE CONTRIBUTION TO PUBLIC SERVICE

9. A number of federal courts have recognized the importance of the Amateur Radio Service and licensees thereof. See Pentel v. City of Mendota Heights, 13 F.3d 1261 (8th Cir. 1994) ("amateur radio volunteers afford reliable emergency preparedness, national security, and disaster relief communications"); Palmer v. City of Saratoga Springs, 180 F.Supp.2d 379, 383-84 (N.D.N.Y. 2001) (same); Williams v. City of Columbia, 707 F.Supp. 207, 212 (D.S.C. 1989) (referencing "the federal interest in maintaining a network of amateur radio communication stations capable of transmitting at frequencies licensed by the FCC"). I would expect that the courts will take the federal interest in promoting amateur radio service communications into consideration when construing revised policies or regulation promulgated by the Commission.

EXECUTIVE RECOGNITION OF AMATUER RADIO SERVICE CONTRIBUTION TO PUBLIC SERVICE

10. In a letter dated June 18, 2002 and directed to the Amateur Radio Service licensee community, President Bush stated in part that "[h]am radio operators have long played an important role in emergency communications, assisting law enforcement personnel and other emergency services as they carry out their responsibilities. I salute amateur radio operators for your work on behalf of public safety officials." I believe the President, along with the entire executive branch (particularly those departments and agencies

whose purpose relates to national preparedness) would support the application of command-and-control type regulations to the Amateur Radio Service.

COMMISSION ORDER AND RULES RECOGNIZING AMATEUR RADIO SERVICE CONTRIBUTION TO PUBLIC SERVICE

11. In the Commission's Memorandum Opinion and Order in PRB-1 (In the Matter of Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities), the FCC noted that aligned with Amateur Radio Service licensees in the matter before it were the "Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and readily available backup network." Id. at ¶22 (see next paragraph). The Opinion and Order described the "strong federal interest in promoting amateur communications." It pointed to "[e]vidence of this interest . . . in the comprehensive set of rules that the Commission has adopted to regulate the amateur service." Id. at ¶24. Furthermore

> [w]e recognize the amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies.

Id.

12. The Commission concluded in its Opinion and Order that state and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted. The Commission expressed its confidence that state and local governments will seek to legislate in a manner that "affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy . . .." Id. at ¶26. There is no

reason to doubt that there remains a strong, if not now compelling, federal interest in promoting the Amateur Radio Service by governing the radio spectrum necessary for its existence pursuant to proven command-and-control approaches.

13. The Commission regulations governing the Amateur Radio Service set forth, among others, the fundamental purpose of "[r]ecognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications." 47 CFR 97.1(a). The general standards governing the Amateur Radio Service include the principle that "[a]t all times and on all frequencies, each control operator must give priority to stations providing emergency communications . . .." 47 CFR 97.101(c). See also 47 CFR §§97.401 – 97.407 (Subpart E – Providing Emergency Communications). In particular, Amateur stations are used by RACES (radio amateur civil emergency service) for civil defense communications during periods of local, regional or national civil emergencies. See 47 CFR §97.407. Also, in recognition of the public service performed by such individuals, in most cases there is no regulatory fee required for applicants, permittees or licensees in the Amateur Radio Service. 47 C.F.R. §1.1162(a).

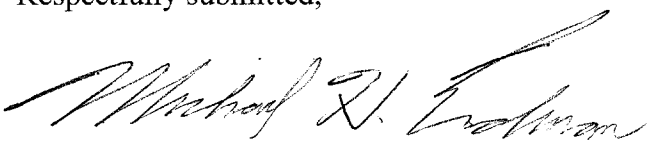
CONCLUSION

Amateur Radio Service licensees have provided, and continue to provide a valuable public service. Emergency communications provided during natural or manmade disasters helps save lives, property, and deliver important information to public and private authorities charged with protecting the public. These individuals provide these services using their own equipment, without public or private subsidies, and often beyond the spotlight of the media. Radio spectrum, a cherished but scarce natural

resource. In order for the Amateur Radio Service to provide the public service described herein, portions of the radio spectrum must be allocated in such a manner that sufficient bandwidth in various parts of the spectrum is allocated to the Amateur Radio Service, without the demands of competitive bidding and other market forces, or presence of unlicensed operators.

In light of the foregoing, I respectfully request that in the event the Commission chooses to revisit its policies relating to the allocation of radio spectrum, that it consider the proven public service role demonstrated by the Amateur Radio Service over the years, and continue to utilize command-and-control regulation over the radio spectrum allocated thereto, now and in the future.

Respectfully submitted,



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