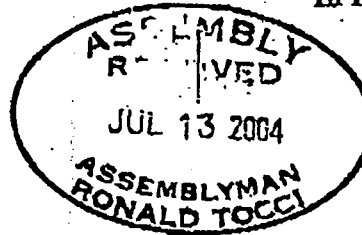




Federal Communications Commission
Washington, D.C. 20554

June 30, 2004

In Reply Refer to:
2004007088



Honorable Ronald C. Tocci
The Assembly State of New York
Room 841 Legislative Office Building
Albany, New York 12248

Dear Assemblyman Tocci:

Thank you for your letter of February 20, 2004 concerning the proposed amateur service antenna tower legislation that you are sponsoring in the New York Assembly. As we understand it, if enacted, the legislation would prohibit a political subdivision from restricting amateur service antenna support structures to less than ninety-five feet above ground and from restricting the number of antenna support structures an amateur radio operator may erect. Based on concerns expressed by some of your colleagues, you have requested that we address various questions regarding the Amateur Radio Service and the Commission's policies and decisions applicable to amateur service antennas and antenna support structures. We will, below, respond to your letter's inquiries.

By way of background, the Commission released its PRB-1 Decision in response to a request from the American Radio Relay League, Inc. (ARRL) to preempt certain local ordinances governing amateur radio antennas and towers.¹ After public notice was made and comment requested on the matters, the Commission concluded in 1985 that a limited preemption policy was warranted because of the strong federal interest in promoting amateur radio communications. Specifically, the Commission ruled that "local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur [service] communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose."² This policy is codified in Section 97.15(b) of the Commission's Rules.³

With regard to your question as to whether the Commission still maintains that there is an important Federal interest in promoting amateur service communications, we confirm that it does. In this regard, we note that since the PRB-1 Decision was adopted, many amateur service licensees have been authorized additional frequency privileges, the Amateur Radio Service license structure has been simplified, questions that an individual

¹ See Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, Memorandum Opinion and Order, 101 FCC 2d 952 (1985) (PRB-1 Decision).

² *Id.* ¶ 25.

³ 47 C.F.R. § 97.15(b).

must answer to qualify for an amateur radio license have been revised and updated, and the Amateur Radio Service has been authorized additional frequency bands on a primary basis.⁴ The Commission's intention that amateur service stations be able to communicate effectively on a number of different frequency bands is reflected in its rules that, among other things, authorize amateur radio stations to transmit on many different frequency segments from any place where it regulates the Amateur Radio Service.⁵

With regard to your questions as to whether the Commission has made factual findings or adopted a specific policy regarding what height of an antenna structure is needed in individual cases, or established any minimum or maximum height standard for amateur radio antennas, we respond that the Commission has not done so. Rather, in the PRB-1 Decision and subsequent decisions, the Commission noted that it would not specify any particular height limitation below which a local government may not regulate.⁶ The PRB-1 Decision requires that local regulations that involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.⁷ In December 2001, the Commission adopted a *Memorandum Opinion and Order* which declined to review a decision that denied a 1996 petition for rule making submitted by the ARRL. That petition requested, among other things, that we modify the PRB-1 Decision to prohibit a local government from specifying a height lower than sixty to seventy feet for an amateur radio antenna structure.⁸ In its *Memorandum Opinion and Order*, the Commission noted that should Congress enact a statutory directive mandating expansion of this "reasonable accommodation" policy, it would act expeditiously to fulfill its obligation under the directive.

With regard to state enactment of laws that would affect Amateur Radio Service licensees' antenna towers, the Commission has not established guidelines for states other than the reasonable accommodation standard in its PRB-1 decisions. We note, however, that the ARRL reports that approximately twenty states have adopted ordinances addressing Amateur Radio Service antenna structures and that of these states, only four have specified heights below which local governments in those states may not regulate antenna structures.⁹

⁴ Stations in a "primary service" are protected from harmful interference from other stations.

⁵ 47 C.F.R. §§ 97.5(a), 97.301.

⁶ PRB-1 Decision at ¶ 25.

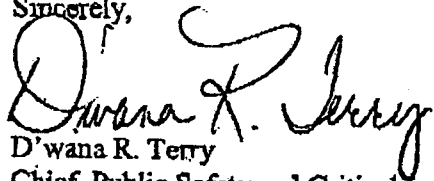
⁷ *Id.*

⁸ See Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service, *Memorandum Opinion and Order*, 17 FCC Red 333 (2001).

⁹ See http://www.arrl.org/FandES/field/regulations/PRB-1_Pkg/index.html (last visited Mar. 30, 2004) for a list of states that have enacted PRB-1 type statutes and the statutes of those states.

For your convenience and information, I have enclosed a copy of the Commission's most recent decisions regarding the scope of its PRB-1 Decision. I trust this information is responsive to your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "D'wana R. Terry". The signature is written in a cursive, flowing style.

D'wana R. Terry
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

Enclosures