

Antenna Regulation



Presented by

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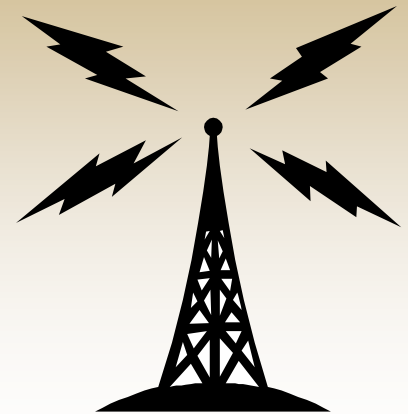
I. What is PRB-1?

"Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications." (State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. See PRB-1, 101 FCC 2d 952 (1985) for details.)

47 CFR 97.15

I. What is PRB-1?

- a. FCC Memorandum, 1985.
- b. Requires reasonable accommodation of amateur radio in enactment of local zoning regulations.
- c. Does not specify antenna height limitations.
- d. Does not limit application of CC&R's.



II. What Does It Mean?

- a. FCC Regulations have the force of federal law.
- b. “Limited” pre-emption (higher law/trumps local or state regulations to the contrary).
- c. Field preemption vs. conflict preemption, RFI example.

- d. Local regulations must constitute the “minimum practicable regulation to accomplish the state or local authorities’ legitimate purposes.”
The regulations may not operate to preclude amateur radio.
- e. 1999 ARRL petition to expand the ruling denied.

III. How Does It Work?

Example:

Amateur (Baskin) obtained a variance from the board of zoning appeals to erect four towers 65 to 120 feet in height, one on each corner of his property.

- The variance included a requirement that the towers be located so that if they fell, they would fall on Baskin's property.
- Other restrictions related to measures to prevent children from climbing the towers.

- Adjacent homeowners filed suit in state court challenging the grant of the variance.
- Baskin, the same day, filed suit in federal court challenging restrictions imposed by the zoning board as part of the grant of the variance.

- The federal district court dismissed Baskin's case on the grounds that it was required to abstain from hearing the case because of the pending state court litigation.
- Baskin appealed to the 6th Circuit Court of Appeals and obtained an order reversing the trial court's dismissal of the case. *Baskin v. Bath Township Board of Zoning Appeals, et al.*, 1994 U.S. App. LEXIS 1660.

- On remand, the trial court ruled in Baskin's favor, holding that the height/location restriction was not a reasonable accommodation under PRB-1.
- However, rather than directing the Board of Zoning appeals to issue the variance as requested, the court remanded the issue back to the Board for further consideration.

- That decision was again appealed to the Sixth Circuit Court of Appeals. The Court of Appeals held that:
 1. PRB-1 "...was intended to benefit federal interests and created no clear command to local governments. Thus, PRB-1 cannot provide a basis for plaintiff's substantive due process claim."
 2. Plaintiff's equal protection and due process claims also failed as did his claim for an award of attorney fees.

Result:

- The court recognized and applied PRB-1 but ultimately deferred to the local zoning authorities. PRB-1 was cold comfort for Mr. Baskin.



IV. Some of the Obstacles:

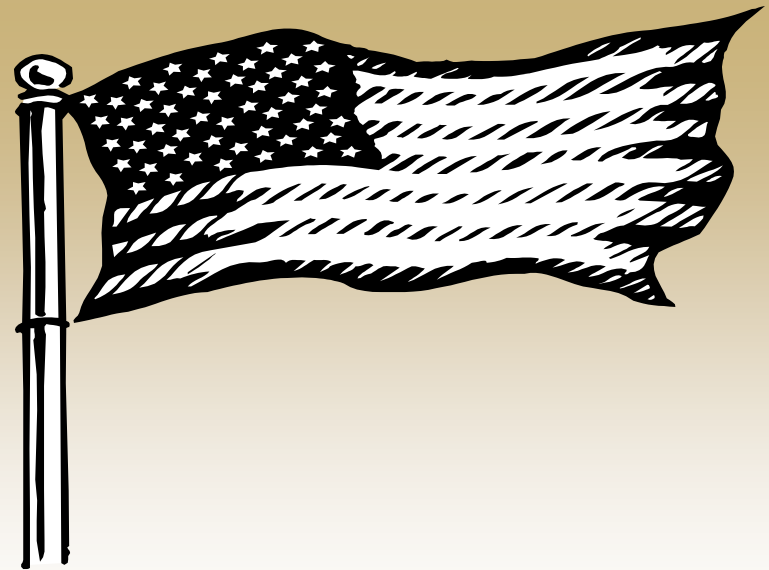
- a. Cost – recovery of attorney fees not available.
- b. Federal reluctance to override local authority.
- c. Issues regarding federal jurisdiction remain problems in some cases.

V. Covenants, Conditions and Restrictions (“CC&Rs”)

- a. Not subject to PRB-1.
- b. Arise by private contract, not by legislation.
- c. Proposed federal legislation would limit enforcement of overly restrictive CC&Rs to the same extent as PRB-1.

HR 3876

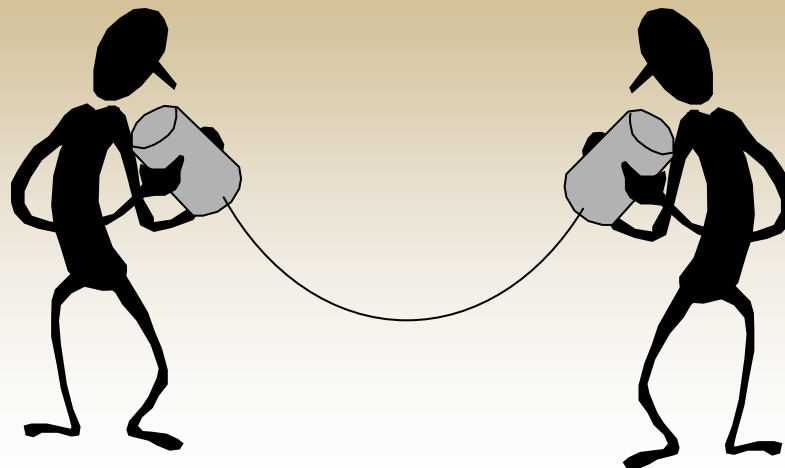
- d. In Ohio, flagpoles not subject to CC&Rs by law. R.C. 5301.072.
- e. ARRL's effort to include CC&Rs in PRB-1 rejected by the FCC in 1999.



- Other provisions of Ohio law recognizing amateur radio:
 - R.C. 2909.04 Disrupting public services.
 - Making it a felony of the fourth degree to “...purposely by any means or knowingly by damaging or tampering with any property...interrupt or impair amateur radio communication being used for public service or emergency communications.”

- R.C. 2913.06 Unlawful use of telecommunications device.
 - An express exemption is provided for persons holding amateur service license issued by the FCC from possessing a radio receiver or transceiver that is intended primarily or exclusively for use in the amateur radio service and is used for lawful purposes.

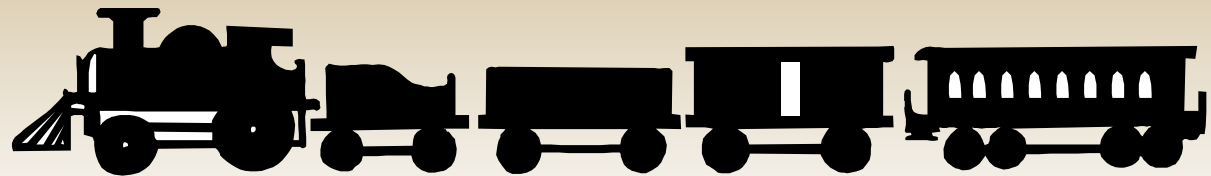
- R.C. 2933.52 Interception of wire, oral or electronic communications.
 - Exempts reception of signals by a station operating on an authorized frequency within amateur bands.



VI. Some Examples

- FCC – tall towers (“in your dreams”) and airports.
 - Antenna towers greater than 200 feet and those within airport flight paths must be registered with the FAA.
 - Airport height limitations based on runway length and tower height using a formula defined in the regs.

- Some interesting exemptions, all governed by state law.
 - Public utilities.
 - Railroads.
 - Sales of liquor.



VII. Alternatives: How Do You Change the Law?

- a. Litigation.
- b. Federal legislation – ARRL trying.
- c. State legislation – 23 states have adopted “PRB-1 like” statutes.
 - i. Most mimic PRB-1, leaving the same ambiguities.
 - ii. Some include minimum height limits (60-70 ft.).



VIII. Why State Legislation?

- a. Some believe local authorities more likely to be directed by state law than federal.
- b. Specific height minimums carry a clear message.
- c. Reports available indicate positive results.

IX. Problems May Remain.

- a. Litigation may yet be necessary to enforce the state law.
- b. Most states don't permit recovery of attorney fees.
- c. Uncertainties remain.



X. Considerations in Passing State Legislation.

It's not easy to change the law.

- a. What legislation will we try to pass?
 - i. Height limitations? If so, what?
 - ii. Specify an appeal process or rely on existing procedures?
 - iii. Try to provide for recovery of fees? (Ohio legislature hates attorney fee shifting provisions.)
 - iv. A unified position is essential, why?

b. Opposition has excellent lobbyists.

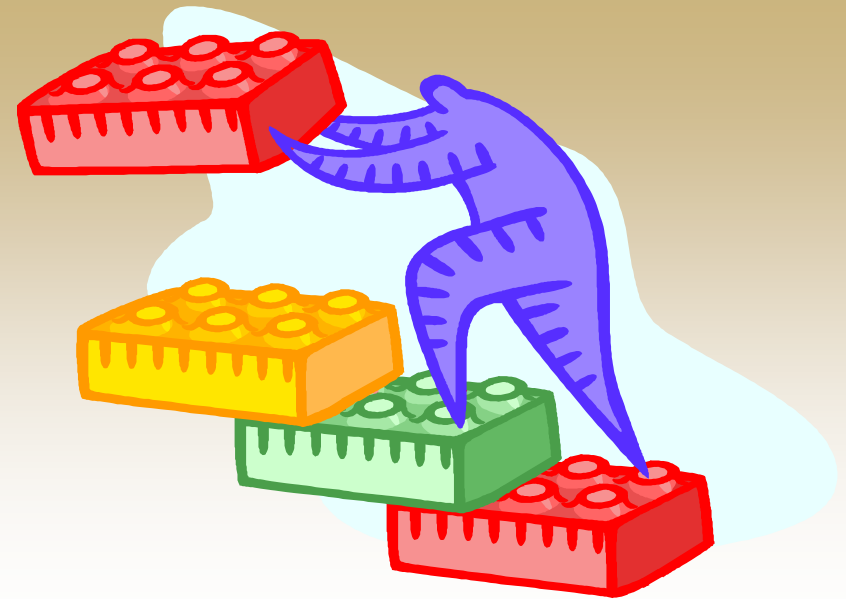


- i. Homebuilders Assn.
- ii. Municipal League.
- iii. Others? (We won't know until they take positions.)



XI. Strategies.

- a. Decision – do we hire lobbyist (\$\$\$) or do it ourselves.
- b. Decide what we want – start small and build on success or try for maximum benefit from the beginning.



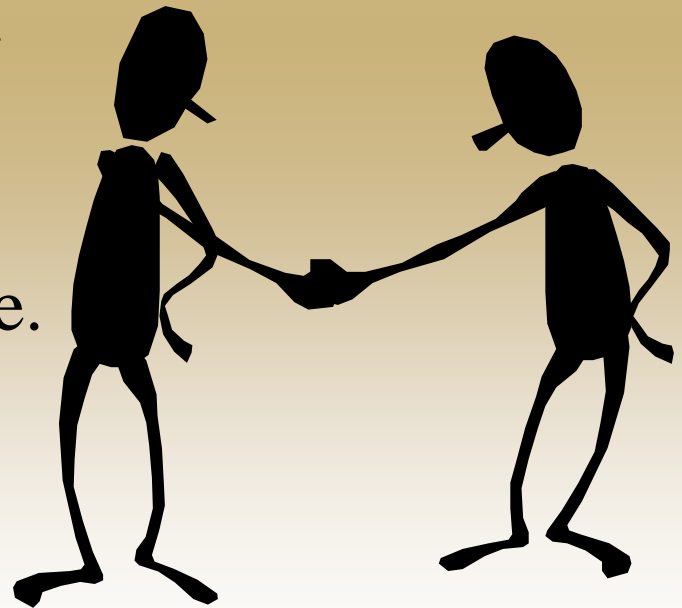
- c. Public relations are essential – we must sell the merits of our cause in the public eye and build grass roots support.
 - i. Data on service,
 - ii. Data on emergency communications,
 - iii. Local political support (Mayors, County Commissioners, others),
 - iv. Personal visits to legislators.
- d. We must present our cause in the interest of national security and public welfare.

XII. Next Steps.

- a. Build a statewide network of amateurs willing to help.
- b. Identify friendly legislators.
 - i. Party in power.
 - ii. Build support of legislative leadership.
 - iii. Have bill drafted and introduced (legislative service).



- c. Develop a “presentation package” of supporting materials.
- d. Personal visits to as many legislators as possible.
- e. Meet with likely opponents and enlist support where possible.



XIII. Sign Up.

