



Federal Communications Commission
Washington, D.C. 20554

July 16, 2012

DA 12-1134

Mr. Leonard J. Umina
324 Arabian Drive
Gilbert, AZ 85296

Dear Mr. Umina:

This is in response to the petition dated January 26, 2012 that you filed requesting that the Commission expand its policy of limited preemption of state and local regulations governing amateur station facilities to preempt private land use regulations such as covenants, conditions, and restrictions (CC&Rs) and rental agreements that limit amateur licensees' ability to deploy antennas.¹ Because that policy is codified in the Commission's Rules,² we agree with your characterization of the request as a petition for rulemaking. For the reasons set forth below, we deny the petition.

The Commission has previously addressed the question of whether to preempt CC&Rs in deeds and bylaws that restrict the installation of antennas and associated support structures used by amateur radio stations. In its 1985 *PRB-1* decision, the Commission established a policy of limited preemption of state and local regulations governing amateur station facilities, including antennas and support structures, but expressly decided not to extend its limited preemption policy to CC&Rs in home ownership deeds and condominium bylaws because "[s]uch agreements are voluntarily entered into by the buyer or tenant when the agreement is executed and do not usually concern the Commission."³ In 2001, the Commission denied a petition requesting that the Commission adopt rules to preempt CC&Rs that do not provide reasonable accommodation for amateur radio operators, and affirmed that the limited preemption policy of *PRB-1* applies only to state and local regulations.⁴ The Commission noted that its decision in *PRB-1* to exclude CC&Rs from its preemption policy was premised upon the fundamental difference between state and local regulations, with which an amateur radio operator must comply, and CC&Rs, which are contractual terms to which the purchaser of a property voluntarily subjects him- or herself.⁵ The

¹ Petition for Rulemaking by Leonard J. Umina (filed February 1, 2012) (Petition). On April 19, 2012, you filed three Supplemental Comments.

² See 47 C.F.R. § 97.15(b).

³ See Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, *Memorandum Opinion and Order*, PRB-1, 101 F.C.C. 2d 952, 960 n.6 (1985).

⁴ See Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antenna 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 Rcd 333, 337 ¶ 9 (2001) (*MO&O*), *recon. dismissed*, 17 FCC Rcd 19408 (WTB PSPWD 2002). Subsequent similar requests for preemption of CC&Rs also have been denied. See, e.g., James Edwin Whedbee, *Letter*, 27 FCC Rcd 4920 (WTB MD 2012), *recon. pending*; Christopher Kaczmarek, *Letter*, 24 FCC Rcd 4092 (WTB MD 2009); Don Schellhardt, *Letter*, 22 FCC Rcd 4025, *aff'd*, *Letter*, 22 FCC Rcd 13511 (WTB MD 2007).

⁵ See *MO&O*, 17 FCC Rcd at 335-37 ¶¶ 6-8.

Commission also concluded that “there ha[d] not been a sufficient showing that CC&Rs prevent amateur radio operators from pursuing the basis and purpose of the amateur service.”⁶ It added that, should Congress see fit to enact a statutory directive mandating the expansion of its limited preemption policy to include more than state and local regulations, it would expeditiously act to fulfill its obligation thereunder.⁷

After the instant petition was filed, Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012, which requires the Commission to report to Congress regarding the uses and capabilities of Amateur Radio Service communications in emergencies and disaster relief.⁸ The statute requires that the study identify impediments to enhanced Amateur Radio Service communications and recommendations regarding the removal of such impediments, including “the effects of unreasonable or unnecessary private land use restrictions on residential antenna installations.”⁹ Had Congress intended to mandate an expansion of the Commission’s policy at this time, it would have done so directly. We believe that it would be inappropriate and premature for the Commission to consider modifying its policy until after Congress has an opportunity to review the report and decide whether to enact a statutory directive mandating the expansion of the Commission’s limited preemption policy to include more than state and local regulations.¹⁰ We therefore deny the instant petition.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.401(e) of the Commission’s Rules, 47 C.F.R. § 1.401(e), the petition for rulemaking filed on January 26, 2012 by Leonard J. Umina IS DENIED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁶ *Id.* at 335 ¶ 6. The Commission added, “In this regard, we note that there are other methods amateur radio operators can use to transmit amateur service communications that do not require an antenna installation at their residence. These methods include, among other things, operation of the station at a location other than their residence, mobile operations, and use of a club station.” *Id.*

⁷ *Id.* at 336 ¶ 8.

⁸ *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6414 (2012).

⁹ *Id.* at § 6414(b)(2).

¹⁰ *See* Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, *Report*, GN Docket No. 96-113, 12 FCC Rcd 16802, 16893 ¶ 58 (1997); Competition, Rate Deregulation and the Commission’s Policies Related to the Provision of Cable Television Service, *Report*, MM Docket No. 89-600, 5 FCC Rcd 4962, 4974 ¶ 13 (1990).