

## **N3JT Response to ARRL**

*CQ magazine's August 2017 issue contained a "Food for Thought" article by Jim Talens, N3JT, expressing concerns about the potential impact of the current wording of H.R. 555 / S. 1534, The Amateur Radio Parity Act of 2017. The ARRL, which is pushing for prompt passage of this bill by the U.S. Senate, responded (without mentioning CQ or Talens by name) with a "Frequently Asked Questions" document, or FAQ, titled "The Amateur Radio Parity Act: Setting the Record Straight." N3JT's response to the ARRL paper follows. We recommend that you read his original commentary and the ARRL FAQ first. Both are accessible via the "top page" of this white paper. - CQ editors*

The ARRL's "FAQ" on the Amateur Radio Parity Act: N3JT Responds

BY JIM TALENS, N3JT

At the outset, I note that the sentence near the end of ARRL FAQs informs us of the overall nature of the rebuttal: "Some of the arguments against APRA can be managed, some not, and some are red herrings." But nothing in the FAQs refutes anything that has been leveled against the tragic weakness of the APRA as currently drafted. The rebuttal sadly and incorrectly characterizes those weaknesses as "red herrings." While I am a strong supporter of ARRL in its overall efforts on behalf of ham radio (and I am even a Diamond Club member), I remain at a loss to understand how ARRL could embrace APRA as currently drafted.

Nothing in the ARRL rebuttal shows how HOAs will not be able to do what they have always done, though now with the imprimatur of federal authority. Further, the rebuttal should not represent that the FCC will be able to do anything other than promulgate rules that parrot what the legislation states. The FCC cannot make the ARPA language in any respect more liberal or permissive. ARRL seems to believe that a level of pro-ham goodwill will arise out of the ARPA provisions once they are known to the HOA boards. We should wish that were the case. It is no less than naïve to expect HOA boards or their advisory trade association (CAI) to allow antennas if they can get away without doing so. The only ones who appear not to know how HOA boards think are those who wrote the rebuttal and who negotiated with the real estate lobby. While the effort may be lauded, the result is just not good for ham radio. As has been clearly shown, ARPA has a lot of language that HOA boards can easily use to deny a resident's request for permission to erect an effective outdoor antenna. Indeed, what is an "effective outdoor antenna"? Who decides? (Answer: the HOA, under ARPA language that can so easily be read exceedingly restrictively. That was the point of the original article that ARRL felt necessary to rebut.)

The article and the rebuttal offer conflicting views of how HOA boards conduct business. My article shows how HOAs might *not* be so cooperative; how under ARPA they can, if they are clever or are advised by their lobbying organization, quash efforts of most hams to erect effective outdoor antennas, especially for HF bands. Further, ARPA does absolutely nothing to help hams obtain access to common property for erecting antennas. Moreover, there is nothing in the ARPA that forces HOAs to allow antennas in the way that PRB-1 does. HOAs are generally run by people who do not understand or appreciate ham radio and do not want *any* antennas erected in their communities. They will look at the provisions of

ARPA, and the rules promulgated by the FCC, with little difficulty in finding ways to deny, delay or thwart hams in getting on the air with antennas that are effective. “Reasonable accommodation” in PRB-1 has been read favorably toward hams in many federal and state cases, most involving HF antennas on towers. HOAs, with few exceptions, would simply not approve those kinds of requests! “Effective outdoor antenna” can be read very narrowly given the concerns for aesthetic consistency that are the hallmark of HOAs. Put simply, cases decided under PRB-1 bear no precedent for ARPA.

While the rebuttal is correct in stating that somebody who has an antenna that technically violates HOA rules is not grandfathered, the act of having such an antenna becomes a federal law violation under ARPA. That’s significant! All those hams who have been operating with antennas hidden away or otherwise not compliant with their HOA prohibitions are now in far worse shape under ARPA and any rules the FCC promulgates. That is hardly a red herring. Rather, it’s what the bill as supported by ARRL says. A clever HOA board, knowing or suspecting there may be some hams using clandestine antennas in their community, may be emboldened by ARPA to issue a broad warning that it is now a federal law violation to have such antennas. How many hams will NOT remove their antennas? So we are better off under ARPA?

The rebuttal states that a building permit is needed under PRB-1 so prior approval by an HOA is not new or different. Not true. A wire antenna for 80 meters strung in the trees on private property does not require a building permit. A 2-foot whip on a balcony requires prior HOA approval under ARPA. A building permit for an R9 antenna permanently mounted may be necessary in many private property locations and would be permitted under most zoning laws, but that kind of antenna is not likely going to be permitted in most HOAs

no matter what! Going further, a tower or large HF roof-mounted antenna on private property would require a building permit, but under ARPA the HOA is readily authorized under federal law to issue an instant denial, even where the HOA homes are single-family and well-spaced. While ARRL correctly suggests that HOAs will not be expected to allow large HF antennas on balconies, the more typical situation is a townhouse or single-family HOA community where an R9 might be reasonably unobtrusive. But the HOA under ARPA could readily deny request to install an R9 because it is aesthetically unacceptable. Under PRB-1, that would not be the case, of course, because local governments would not view aesthetics important as against “reasonable accommodation.”

While ARRL suggests that HOA limits on antennas can be blamed on lenders, HOAs always have had the right to allow antennas. At best, ARPA gives HOA boards the ability to hide behind federal law to deny permission for any antenna other than perhaps a small whip for 2m on a railing behind a single-family home in a community. Aesthetics as a basis for denial now becomes federal mandate (instead of a contractual issue) under standards that can be easily subverted into an outright denial. How this is not worse than matters now stand is mystifying, unless of course the HOA board is inclined toward granting antennas in the spirit of ARPA. That could happen, and to that extent, ARPA would be helpful. But then there is reality.

Finally, the notion of indefinite delay in HOA approval (or denial) would invoke the need for the resident ham to file a complaint with the FCC or perhaps sue in federal court. Even if a ham were to do that, the typical turn-around for a response is years, not to mention the expense involved. We can hope the FCC includes a time limit, but ARPA certainly does not

contemplate doing so. Absent that requirement in the legislation likely would be interpreted by the FCC as a mandate to exclude a time limit.

Having said all this, ARRL is for commended for trying to replicate something akin to PRB-1 in the CC&R environment. But it should work on the Senate to close the loopholes that the current language so plainly creates. Were both House and Senate to pass current ARPA language and the President to sign it, the efforts of all should then be directed at the FCC rulemaking proceeding to try to limit HOAs' ability to subvert the putative objective of the legislation to allow hams in HOA communities to have "effective outdoor antennas." Until then, the language of APRA should be opposed as far too pro-HOA.