

In response, THE AMHERST ALLIANCE and the AMERICAN RADIO RELAY LEAGUE (ARRL) have urged Congress to enact H.R. 1478, the Amateur Radio Emergency Communications Consistency Act. This legislation, re-introduced in 2003 by Representative Steven Israel (D-NY), would direct the Federal Communications Commission to override the HOA antenna bans. In their place, HOAs would be required to make *"reasonable accommodation"* of Amateur Radio antennas in their regulations.

In Amherst's Written Comments on the Presidential Spectrum Policy Initiative (PSPI), we have urged NTIA, *and also* the White House, to join Amherst and ARRL in endorsing, and actively supporting, Representative Israel's important bill.

As a source of further information on this legislation, *and* its possible expansion to protect other radio-based emergency services as well, THE AMHERST ALLIANCE hereby submits in this Docket the text of its Written Testimony for June 11, 2003 Congressional Hearings on "Emergency Communications Needs Of First Responders".

For whatever reason, this Written Testimony was not placed by Congressional authorities into the official record of the Hearings. However, it was indeed submitted to the House Subcommittee on Telecommunications and The Internet. Presumably, the original and related copies can be found in somewhere in the files of the Subcommittee and/or its leaders.

We hope and believe the information and ideas in this Written Testimony will be useful in improving the scope and reliability of emergency communications. The document should be treated as part of the public record for NTIA's PSPI Docket.

Respectfully submitted,

Melissa S. Lear
Special Assistant to the President
THE AMHERST ALLIANCE
9 Nolan Road
South Glens Falls, New York 12803
webweaver@mail15.com

Dated: _____
March 18, 2004

THE AMHERST ALLIANCE

"Voices For Choices"

pioneerpath@hotmail.com

(203) 756-7310 or (203) 757-1790

45 Bracewood Road

Waterbury, Connecticut 06706

July 2, 2003

**Representative Fred Upton
Chairman
Representative Edward Markey
Ranking Minority Member
Subcommittee on Telecommunications
And The Internet
Committee on Energy And Commerce
U.S. House of Representatives
Washington, DC 20515**

RE: June 11 Hearings On Spectrum Needs Of America's First Responders

Dear Representatives Upton and Markey:

We commend you and your Subcommittee for holding Hearings, on June 11, 2003, to consider the spectrum needs of the nation's first responders. This is clearly a legislative enterprise of the highest importance.

While the record is still open for written statements by interested parties, THE AMHERST ALLIANCE hereby submits formal Written Testimony on ways to protect access to the radio spectrum by the first responders to natural and man-made disasters, including acts of terrorism.

We respectfully request that this Written Testimony be placed in the record.

As you know, THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group, concerned with a wide range of media regulation issues. Our Members include Amateur Radio operators and other first responders, as well as radio stations. We ask you to honor our request.

Respectfully,

**Don Schellhardt
Attorney For THE AMHERST ALLIANCE**

WRITTEN TESTIMONY OF
DON SCHELLHARDT,
ATTORNEY FOR
THE AMHERST ALLIANCE,
ON
SPECTRUM NEEDS OF
THE NATION'S FIRST RESPONDERS

PRESENTED TO
THE U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET

FOR SUBCOMMITTEE HEARINGS

ON

JUNE 11, 2003

TABLE OF CONTENTS

	<u>Page</u>
<i>ABOUT THE AMHERST ALLIANCE</i>	1
<i>THE NEED FOR “DEFENSE OF THE SPECTRUM”</i>	1
<i>ENDORSEMENT OF H.R. 713 AND S. 537: THE AMATEUR RADIO SPECTRUM PROTECTION ACT OF 2003</i>	2
<i>THE NEED TO EXPAND THE AMATEUR RADIO SPECTRUM PROTECTION ACT OF 2003</i>	3
<i>Shortwave Transmissions</i>	3
<i>Citizens Band Transmissions</i>	4
<i>Radio Astronomy</i>	5
<i>THE “JUDGMENT CALLS” IN THE NETHERLANDS AND JAPAN</i>	5
<i>A PROPOSAL FOR EXPANDING THE AMATEUR RADIO SPECTRUM PROTECTION ACT OF 2003</i>	6
<i>ENDORSEMENT OF H.R. 1478: THE AMATEUR RADIO EMERGENCY COMMUNICATIONS CONSISTENCY ACT</i>	7
<i>A PROPOSAL FOR MERGING H.R. 713 WITH H.R. 1478</i>	7
<i>CONCLUSION</i>	10

**APPENDIX:
RECOMMENDED TEXT OF H.R. 713,
AS REVISED BY PROPOSED AMENDMENTS**

My name is Don Schellhardt. I am the Attorney For THE AMHERST ALLIANCE, and I am now submitting Written Testimony on behalf of this organization. I am also the Co-Founder of Amherst, and served for 2 years as its first National Coordinator.

ABOUT THE AMHERST ALLIANCE

THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group which calls for greater diversity in media ownership and programming. We were founded on September 17, 1998 -- in Amherst, Massachusetts -- in order to mobilize public support for the establishment of a Low Power FM Radio Service. Since the FCC's establishment of a Low Power FM Service, in January of 2000, we have been actively involved with the process of Low Power FM implementation. At the same time, however, our Members have led us to become involved with several other media issues, ranging from the FCC's deliberations on media ownership limits to the Copyright Office deliberations on Internet royalties for small webcasters.

THE NEED FOR "DEFENSE OF THE SPECTRUM"

One of our issues of greatest concern has been what we call "Defense Of The Spectrum". By this, we mean efforts to protect small but vital broadcasting services -- notably, Amateur Radio, shortwave, Citizens Band transmissions and radio astronomy -- from erosion, or even displacement, by the rising tide of commercial wireless transmissions.

Our efforts on this front have included May 23 Written Comments in FCC Docket 03-104, opposing approval of Broadband Over Powerlines (BPL), and a June 11 letter to President Bush, stating our concerns about the inter-agency “Spectrum Policy Initiative” he launched in a Presidential Memorandum on June 5.

***ENDORSEMENT OF H.R. 713 AND S. 537:
THE AMATEUR RADIO SPECTRUM PROTECTION ACT OF 2003***

As another step in our “Spectrum Defense” campaign, we are pleased and proud to endorse H.R. 713, sponsored by Representative Michael Bilirakis (R-FL), and S. 537, the companion bill introduced in the other House of Congress by Senator Michael Crapo (R-ID).

In this regard, we strongly second the oral testimony of Jim Haynie, President of the American Radio Relay League (ARRL), during these Hearings.

Legislation to protect Amateur Radio transmissions, which time after time have played a crucial role during the aftermath of both natural *and* man-made disasters, is clearly needed -- and it is needed *now*.

As noted in Section 2 -- the “Findings” Section -- of H.R. 713:

- (4) The Federal Communications Commission has taken actions which have resulted in the loss of at least 107 MHz of spectrum to radio amateurs.**

If the FCC proceeds to authorize BPL, and/or if the White House proceeds with the June 5 “Spectrum Policy Initiative” in its present form, the loss of 107 MHz could be just the beginning. Amateur Radio truly *needs* the protection that enactment of H.R. 713 would provide.

*THE NEED TO EXPAND
THE AMATEUR RADIO SPECTRUM PROTECTION ACT OF 2003*

While we strongly endorse enactment of H.R. 713, as currently written, we *also* strongly endorse *expansion* of H.R. 713 -- to encompass comparable protection for *other* small but vital “first responders” in the broadcasting community.

Shortwave Transmissions

Shortwave transmissions, like Amateur Radio transmissions, have often constituted the first -- or one of the first -- sources of information flowing out of, and/or into, areas facing a natural or man-made disaster.

In addition to their “first response” capabilities, shortwave transmissions also frequently serve the more routine -- but still vital -- function of facilitating the flow of ideas and information within, and across, national boundaries. *If* we value human freedom, then preserving *listener* access to shortwave frequencies is particularly important in societies which are largely closed, or are becoming so. Of course, listener access is impossible unless *broadcaster* access is also preserved.

Citizens Band Transmissions

Although references to Citizens Band transmissions often conjure up images of SMOKEY AND THE BANDIT, Citizens Band transmissions also provide a number of important public safety benefits:

- Routine reports of highway conditions, *and* key alerts (as needed) about accidents and other emergencies, by CB-equipped volunteers in the Radio Emergency Affiliated Communications Teams (REACT)
- A way that mobile CB users can call for help, often with more reliability than cell phones can provide, in the event of vehicle breakdown and/or other highway crises
- A way that base station CB users (especially, but not exclusively, in rural areas) can call neighbors for help, and/or exchange information with neighbors during a disaster -- even if the phones and electricity are out
- A way that interstate truckers, and other drivers, can use conversation to stay awake during long, lonely drives

We submit that, in a possible competition for spectrum, any or all of these public safety functions are more important to the nation than empowering computer users to connect to The Internet 2 seconds faster than before.

Radio Astronomy

We acknowledge that radio astronomy is unlikely to serve a “first response” function -- unless it helps us to detect incoming meteorites. Still, radio astronomy has served society well by expanding the body of human knowledge about the universe around us. It seems likely to continue this service far into the future.

For this reason, we believe that radio astronomy should *also* enjoy statutory protection against displacement by BPL or similar signals, to which it is acutely vulnerable.

THE “JUDGMENT CALLS” IN THE NETHERLANDS AND JAPAN

We note that concerns about interference -- with *more essential uses* of the broadcast spectrum -- have led regulatory agencies in both The Netherlands and Japan to reject approval of Broadband Over Powerlines. Thus, the United States would not be alone if it refused to open the floodgates to a tidal wave of BPL signals and other new commercial wireless transmissions. *At a minimum*, Congress should adopt the H.R. 713 approach of identifying small but vital uses of the spectrum -- to be protected from displacement, or at least assured of relocation on the spectrum if needed.

***A PROPOSAL FOR EXPANDING
THE AMATEUR RADIO SPECTRUM PROTECTION ACT OF 2003***

In order to facilitate action by the Subcommittee to expand the radio spectrum protection coverage in H.R. 713, to include other small but vital broadcasting services beyond Amateur Radio transmissions, we have developed specific language which could be used to amend the bill.

The recommended revisions to the current text of H.R. 713 can be found in the *Appendix* to this Written Testimony.

The core provisions of the recommended amendment would:

- Preserve the existing requirement that the FCC *must protect* use of the radio spectrum for Amateur Radio transmissions**
- Incorporate a new requirement that the FCC *must consider protecting*, in a formal rulemaking, use of the radio spectrum for each of the following purposes: shortwave transmissions, Citizens Band transmissions and radio astronomy**
- Establish a *rebuttable* presumption, for purpose of this rulemaking, that these uses of the spectrum should be protected**

In addition, in several places within the bill where the Amateur Radio Service is referenced, the recommended amendment would add the phrase:

... including military broadcasts conducted in tandem with civilian amateur radio or amateur satellite services,

We believe this aspect of the recommended amendment is actually a clarification of what the authors of H.R. 713 already intended.

The change would assure protection of the *Military Affiliate Radio Service (MARS)*: a national defense communications network, in which civilian Amateur Radio operators work in concert with military broadcasting personnel to ensure the steady flow of personal messages back and forth between Americans in military uniform and their family and friends on the home front. Since the MARS network is a hybrid of Amateur Radio *and* military broadcasts, protecting only the *civilian* portions of it -- as H.R. 713 provides -- might not be sufficient to preserve the system. With the change we recommend, *both* portions of the MARS network would be shielded against displacement by newer, less public spirited transmissions.

**ENDORSEMENT OF H.R. 1478:
THE AMATEUR RADIO EMERGENCY COMMUNICATIONS
CONSISTENCY ACT**

In addition to the protection against spectrum displacement that H.R. 713 provides, the Amateur Radio Service must also be shielded against another force: private land use regulations which bar homeowners and/or tenants from installing Amateur Radio equipment. Such bans abound in planned communities and other neighborhoods around the country, where Homeowners Associations (HOAs), and others, usually justify them on “aesthetic” grounds -- even though it is easy to find compact equipment, which is effective without being obtrusive.

HOA bans on Amateur Radio equipment are working in practice to deprive thousands of American neighborhoods, and tens of millions of American citizens, of the emergency preparedness services that are otherwise available -- virtually around the world. The bans are petty ... unjustified by the evidence about actual aesthetic impact ... and, above all, dangerously shortsighted.

In future disasters, *including* acts of terrorism, it is well established that Amateur Radio communications will save lives. From this, it follows that HOA bans on Amateur Radio communications will *cost* lives. Perhaps, given the geographic prevalence of such bans, and the growing availability of Weapons of Mass Destruction, the bans will cost lives on a scale we cannot yet imagine.

Fortunately for all of us, Representative Steven Israel (D-NY) has introduced H.R. 1478: The Amateur Radio Emergency Communications Consistency Act. This legislation would make private land use regulations, like regulations established by State and local governments, subject to the FCC's jurisdiction when Amateur Radio operations are involved. The bill would effectively empower the FCC to modify, restrain or even override HOA bans on Amateur Radio operations.

Like ARRL, THE AMHERST ALLIANCE heartily supports this bill.

Since H.R. 1478, like H.R. 713, has been referred to *this* Subcommittee, the Subcommittee can -- and should -- report *both* proposals to the full Committee, and later to the House floor.

As we have done with H.R. 713, we recommend the adoption of strengthening amendments to H.R. 1478.

In the case of H.R. 1478, however, our strengthening amendments would be less complex. We recommend *expanding* the scope of the bill's coverage to provide FCC jurisdiction over private land use regulations which affect:

- Shortwave equipment and/or operations
- Citizens Band equipment and/or operations, *if* used by volunteer participants in Radio Emergency Affiliated Communications Teams (REACT)
- Any other broadcasting equipment and/or operations which the FCC identifies as valuable for conducting emergency communications and/or maintaining public safety and/or preserving national security

A PROPOSAL FOR MERGING H.R. 713 AND H.R. 1478

Although we certainly would not oppose separate Subcommittee and full Committee approval of H.R. 713 and H.R. 1478, we believe that -- all other factors being equal -- it would be more efficient and effective to combine H.R. 713 with H.R. 1478. Better still would be a combination of H.R. 713, *as expanded* through the amendments we have recommended, with H.R. 1478, *as expanded* through the amendments we have recommended.

The revised text of H.R. 713, as set forth in the Appendix to this Written Testimony, shows how this could be done.

CONCLUSIONS

To reiterate, briefly, the legislative recommendations of THE AMHERST ALLIANCE, regarding action to address the spectrum needs of first responders, we urge this Subcommittee to:

- **Report H.R. 713 to the full Committee, *after* voting to adopt strengthening amendments:**
 - **A requirement that the FCC must consider protecting shortwave transmissions, Citizens Band transmissions and radio astronomy**
 - **Clarification of references to Amateur Radio, so that *all* of the Military Radio Affiliate Service (MARS) network is protected**
- **Report H.R. 1478 to the full Committee, *after* voting to adopt strengthening amendments:**
 - **Protection of shortwave equipment and/or operations**
 - **Protection of Citizens Band equipment and/or operations, *if* used by volunteer participants in Radio Emergency Affiliate Communications Teams (REACT)**
 - **Protection of any other broadcasting equipment and/or operations which the FCC identifies as valuable for conducting emergency communications ... and/or maintaining public safety ... and/or preserving national security**
- **Ideally, combine the expanded version of H.R. 713 with the expanded version of H.R. 1478 -- to form a single bill**

RECOMMENDED TEXT OF H.R. 713
[AND COMPANION BILL S. 537],
THE AMATEUR RADIO SPECTRUM PROTECTION ACT OF 2003,
AS REVISED BY PROPOSED AMENDMENTS
ENDORSED BY
THE AMHERST ALLIANCE

June 28, 2003

Standard and *italicized* TIMES NEW ROMAN type = Current text of H.R. 713

Bold TIMES NEW ROMAN type = Amendment #1
(Based on text of H.R. 1478,
The Amateur Radio Emergency Communications Consistency Act)

Bold Italicized TIMES NEW ROMAN type = Amendment #2
(Proposed by THE AMHERST ALLIANCE)

Brackets [] indicate current text of H.R. 713 that would be deleted

A BILL

To ensure the availability of spectrum to amateur radio operators [.] **and provide that private land use rules be treated as a State or local regulation for purposes of certain Federal Communications Commission regulations.**

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled.*

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Amateur Radio Spectrum Protection **and**
Emergency Communications Consistency Act of 2003’.

SEC. 2. FINDINGS.

The Congress finds the following:

- (1) More than 650,000 radio amateurs in the United States are licensed by the Federal Communications Commission.
- (2) Among the basic purposes of the Amateur Radio and Amateur Satellite Services are to provide voluntary, noncommercial radio service, particularly emergency communications.
- (3) Emergency communications services by volunteer amateur radio operators have consistently and reliably been provided before, during, and after floods, hurricanes, tornadoes, forest fires, earthquakes, blizzards, train accidents, chemical spills, and other disasters [.], ***including acts of terrorism.***
- (4) The Federal Communications Commission has taken actions which have resulted in the loss of at least 107 MHz of spectrum to radio amateurs.
- (5) ***Private land use rules and/or covenants, in planned communities and other areas, have frequently restricted the installation and/or use of Amateur Radio equipment to the point at which Amateur Radio Service operations, and their emergency communications capabilities, have been effectively banned in such areas.***
- (6) ***Similar or identical developments are also threatening to erode the viability of shortwave and Citizens Band transmissions, both of which have also demonstrated a proven capability to materially enhance emergency communications, public safety services and the free flow of ideas and information, both within and across national boundaries.***
- (7) ***In addition, similar or identical developments are threatening to erode the viability of certain radio astronomy operations, both amateur and professional, which have made significant contributions to the body of human knowledge and the talent pool of skilled scientists and broadcasters.***
- (8) ***New federal statutes and regulations are needed in order to assure continuation of, and potential expansion of, the vital contributions currently made by the Amateur Radio Service, and certain other forms of broadcast communications, to the nation's emergency preparedness capabilities and public safety services, as well as to other aspects of the national interest.***

SEC. 3. FEDERAL POLICY REGARDING REALLOCATION OF AMATEUR RADIO SPECTRUM [.] **AND/OR CERTAIN OTHER BROADCAST OPERATIONS WHICH MAKE VITAL CONTRIBUTIONS TO THE NATIONAL INTEREST.**

Section 303 of the Communications Act of 1934 is amended by adding at the end the following new subsection:

‘ (z) (1) Notwithstanding subsection (c), after July 1, 2003 --

‘[(1)] (i) make no reallocation of primary allocations of bands of frequencies of the amateur radio and amateur satellite services, **including military broadcasts conducted in tandem with civilian amateur radio and amateur satellite services;**

‘[(2)] (ii) not diminish the secondary allocations of bands of to the amateur radio or amateur satellite services, **including military broadcasts conducted in tandem with civilian amateur radio and amateur satellite services;** and

‘[(3)] (iii) make no additional allocations within such bands of frequencies that would substantially reduce the utility thereof to the amateur radio or amateur satellite services, **including military broadcasts conducted in tandem with civilian amateur radio and amateur satellite services;**

unless the Commission, at the same time, provides equivalent replacement spectrum to amateur radio and amateur satellite service. [’]

‘ (2) **Notwithstanding subsection (c) ---**

(i) **within 10 days of the date of enactment of Section 303 (z) (1), extend the protections of Section 303 (z) (1), on an interim basis, to shortwave broadcasts, Citizens Band broadcasts and radio astronomy operations;**

(ii) **within 90 days of the date of enactment of Section 303 (z) (1), issue for public notice and comment the proposed version of a final rule that would make permanent the interim protections of Section 303 (z) (2) (i), based upon the rebuttable presumption that the**

- protected operations enhance the nation's emergency communications capabilities and/or the nation's public safety services, and/or promote the free flow of ideas and information within and across national boundaries, and/or significantly expand the body of human knowledge, and/or make other vital contributions to the national interest;*
- (iii) *within 1 year of the date of enactment of Section 303 (z) (1), promulgate a final rule which makes permanent the interim protections of Section 303 (z) (2) (i), for all of the broadcast operations which are referenced therein, except in those specific cases (if any) in which the rebuttable presumption of a vital national contribution has been overcome by a clear preponderance of the evidence; and*
- (iv) *periodically as needed, but in no event less frequently than every 10 years, issue and conclude a Notice Of Inquiry regarding whether the protections of Section 303 (z) (2) should be extended to, and/or withdrawn from, any specific broadcast operations, based upon whether vital contributions to the national interest are in fact being made, with all currently protected broadcast operations remaining subject to the rebuttable presumption of a vital national contribution.*

SEC. 4. TREATMENT OF PRIVATE LAND USE RULES AS LOCAL REGULATION.

- (a) **For purposes of the Federal Communications Commission's regulation relating to station antenna structures and/or operations in the amateur radio services (47 CFR 97.15), including military broadcasts conducted in tandem with civilian amateur radio or amateur satellite services, any private land use rules shall be treated as a State or local regulation and shall be subject to the same requirements and limitations as a State or local regulation.**

(b) The provisions of Section 4 (a) shall also apply to:

- (1) shortwave radio receiving and/or transmission equipment and/or operations;*
- (2) Citizens Band radio equipment and/or operations, if they involve participants in volunteer Radio Emergency Associated Communications Teams (REACT); and*
- (3) any other broadcasting equipment and/or operations which the Federal Communications Commission identifies as being of value for conducting emergency communications and/or maintaining public safety and/or preserving national security.*

APPENDIX Prepared By:

DON SCHELLHARDT
Attorney For THE AMHERST ALLIANCE
pioneerpath@hotmail.com
(203) 756-7310 or (203) 757-1790
45 Bracewood Road
Waterbury, Connecticut 06706

June 28, 2003