



4/5/2018

**I'm from the Government...
(*Planning Department*)
...and I'm Here!**

Presenter:

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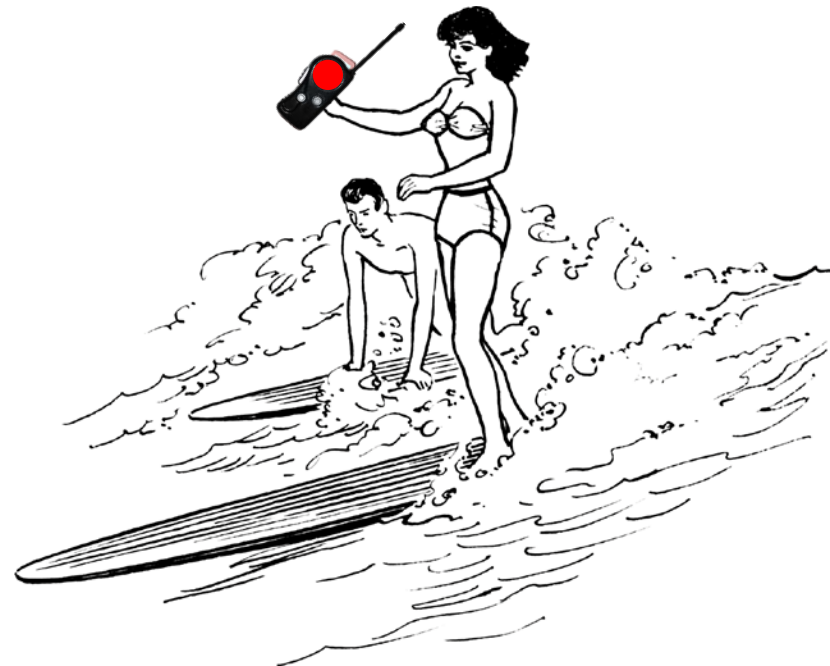
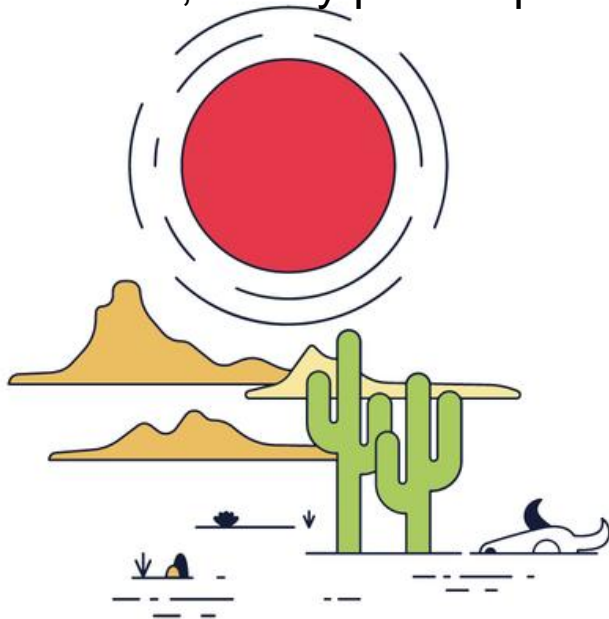
Lawyers **LOVE** Disclaimers!

This lecture is for informational purposes only. Hopefully, you will find it entertaining, as well. If not, tough.

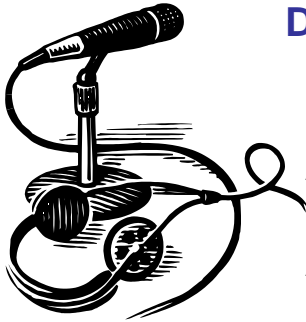
This lecture is **not** intended to provide legal advice, and may not reflect recent law changes, court cases, or ARRL petitions.

Also this lecture does not (necessarily) reflect the official positions, views, hopes, or even the deep, dark secret desires of the ARRL, any of my client local governments, or any person presently on this or any other planet.

Ta Da.



Get Ready, take aim (at me)...



Dr. Jonathan Kramer, W6JLK (Extra Class)

Licensed since 1971
Life Member of the ARRL since 1973ish
ARRL Volunteer Counsel
Volunteer Examiner
ARES/CERT Member



FCC General Radio Telephone w/ Ship Radar

Originally 1st Phone/radar
GMRSS Maintainer & Operator

Worked for local, state, fed governments since 1984

Wireless siting reviews, including amateur tower apps, for nearly 30 years
Wireless Ordinances, Amateur Provisions
RF safety issues (Co-author of FCC's guide to local governments)



"I'm a lawyer"

Admitted in California and New Mexico

"I are, ah, really, really Smarp."

JD
LL.M (IT/Telecom Law)
Doctor of Law & Policy





Fire!

PRB 1...

“Waiter! Reality check, please!”

- National policy established by the FCC defining the relationship between antennas (antenna structures) and local zoning considerations.
- *Limited* preemption of local zoning considerations
- Codified at 47 C.F.R. § 97.15(b)

PRB 1...

“Waiter! Reality check, please!”

- History
 - 1984: ARRL Petitions FCC to preempt local government restrictions on amateur radio antenna structures
 - 1985: FCC adopts PRB 1.
 - 1999: ARRL petitions FCC to extend PRB 1 to preempt CC&Rs (more on this, later).
 - 2000; ARRL petitions FCC to reconsider 1999 denial.

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PRB 1...

“Waiter! Reality check, please!”

Sec. 97.15 Station antenna structures.

(a) *[deals with antennas in excess of 200' AGL or near public airports]*

(b) *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.)*

[64 FR 53242, Oct. 1, 1999]

HAM SHACK



CC&Rs: Read the fine print!

- CC&Rs = Covenants, Codes, and Restrictions
- Covenants = ***Enforceable promises.***
- Codes = ***Rules you're bound to follow.***
- Restrictions = (Huh? What restrictions?)
- Status of a ***private contract*** between consenting ***adults (ahem)***
- CC&R's can be 'enforced' by others bound by the same promise (an 'equitable servitude')
- How far is the boundary of enforcement? Sight? Feet?



CC&Rs: Read the fine print!

- PRB 1 and CC&Rs (2001):

- **ARRL to FCC:**

- Ah, would you please extend PRB 1 to preempt those pesky CC&Rs and similar private contracts based on OTARD?

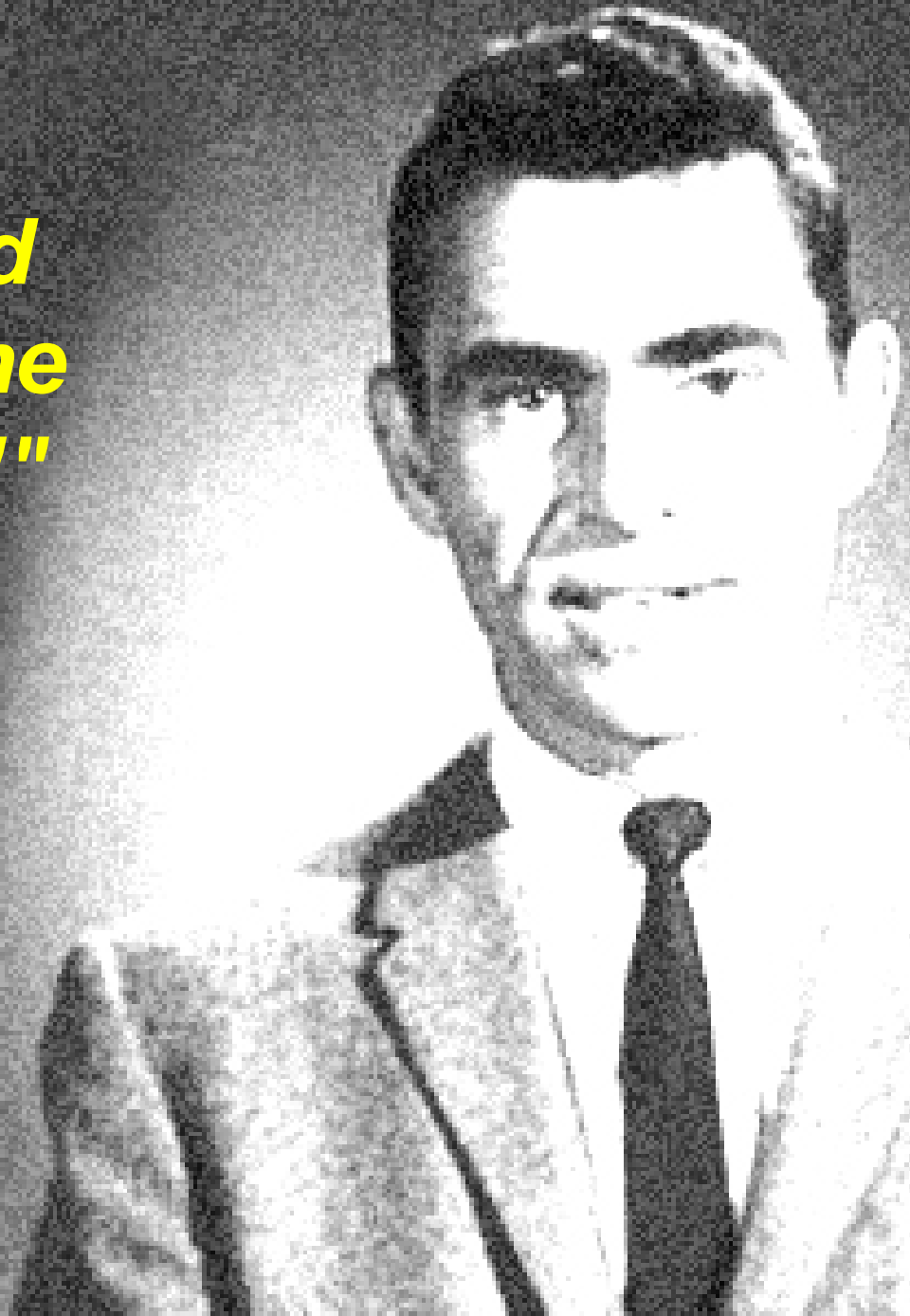
- **FCC to ARRL:**

- Thanks for asking, but the answer is **no**.

But while we're on the subject, we will talk about *OTARD*, and you *won't like* what we have to say.

***“That's the
signpost up ahead
- your next stop, the
Planning Counter!”***

...



PUTTING YOUR BEST FOOT (and Planning Case) FORWARD

- Some basics (Information collection):
 - **What, exactly, are the local zoning rules in your community governing amateur radio antenna structures? Get a copy (likely online) and study them. Add a musical score.**
 - **What previous cases have been decided under the current rules? Ask to review the files and find out why the cases were approved or disapproved. Explain why you're asking (“...so I can do the best job putting together a complete application...”)**
 - **Ask the counterperson for all of the forms you'll need, and find out all of the fees you may be asked to pay.**
 - **What about a fee waiver?**

PUTTING YOUR BEST FOOT (AND CASE) FORWARD

- Some basics (Information collection):
 - **Know, exactly, what you're going to ask permission to do.**
 - **Loser: "I want to put some antennas up about 65 feet in the air. I know what's best here, not you!"**
 - **Better: "I want to erect an XYZ tower with a LMN rotator and an ABC yagi. Here's a drawing..."**

THE PLANNER'S RESPONSE?

STOP! TAKE A BREATH...

- Things to remember...the odds are very high that:
 - Your planner has little or no experience with ham tower projects;
 - Your planner thinks your project is just like a cell tower;
 - Your planner has no technical expertise...

STOP! TAKE A BREATH...

- Your planner thinks that RF is...



PLANNER CPR:



- HELP restart your planner's heart by:
 - Keeping your voice calm and friendly at all times;
 - Take the time to explain, in detail, your project and why you need what you're asking for;
 - How?

Making Your Case

Planner: “Why does it have to be that tall? It not permitted by our code.”

Ham: “Let me show you the engineering for the XYZ yagi antenna. That engineering justifies the height I need, and demonstrate that I comply with the federal and state laws that govern antenna height.”

- Roll your own antenna? NEC and EZNEC are your friends...use ‘um if you’ve got ‘um.
- Commercial antenna? Your antenna manufacturer is your friend...use ‘um to get NEC/EZNEC outputs.
- Show the relationship between height above terrain versus the angle of the main lobe (launch angle). Show the launch angle for multiple heights around your requested height. Explain why a low launch angle is critical for HF long-haul communications. ***This is likely the most important evidence you can submit to justify your height request!***
- **BEWARE: NEVER, NEVER, NEVER USE THE “R” WORD!**
- **...But be prepared to show compliance with FCC OET Bulletin 65 for amateur operations.**

SECTION 6409(a) OF THE MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012

An incredibly powerful zoning tool for
hams.....but

With Great Power comes Great Responsibility

Who knew

this applied to hams!?

Mods to Existing, Permitted Towers?

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012:

(a) Facility modifications

(1) In general Notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) Eligible facilities request

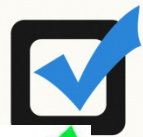
For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves—

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) Applicability of environmental laws Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

Basic 6409(a) Checklist for Hams

- Tower located private property?
- Increase tower height 20' or less?
- Increase antenna width 20' or less?
- No excavation outside of existing?
- Does not defeat camouflage?
- Complies with prior permits?



Radio Frequency Emissions Safety 101

Congress delegated sole national authority to the FCC to set RF emissions safety standards (Telecom Act of 1996).

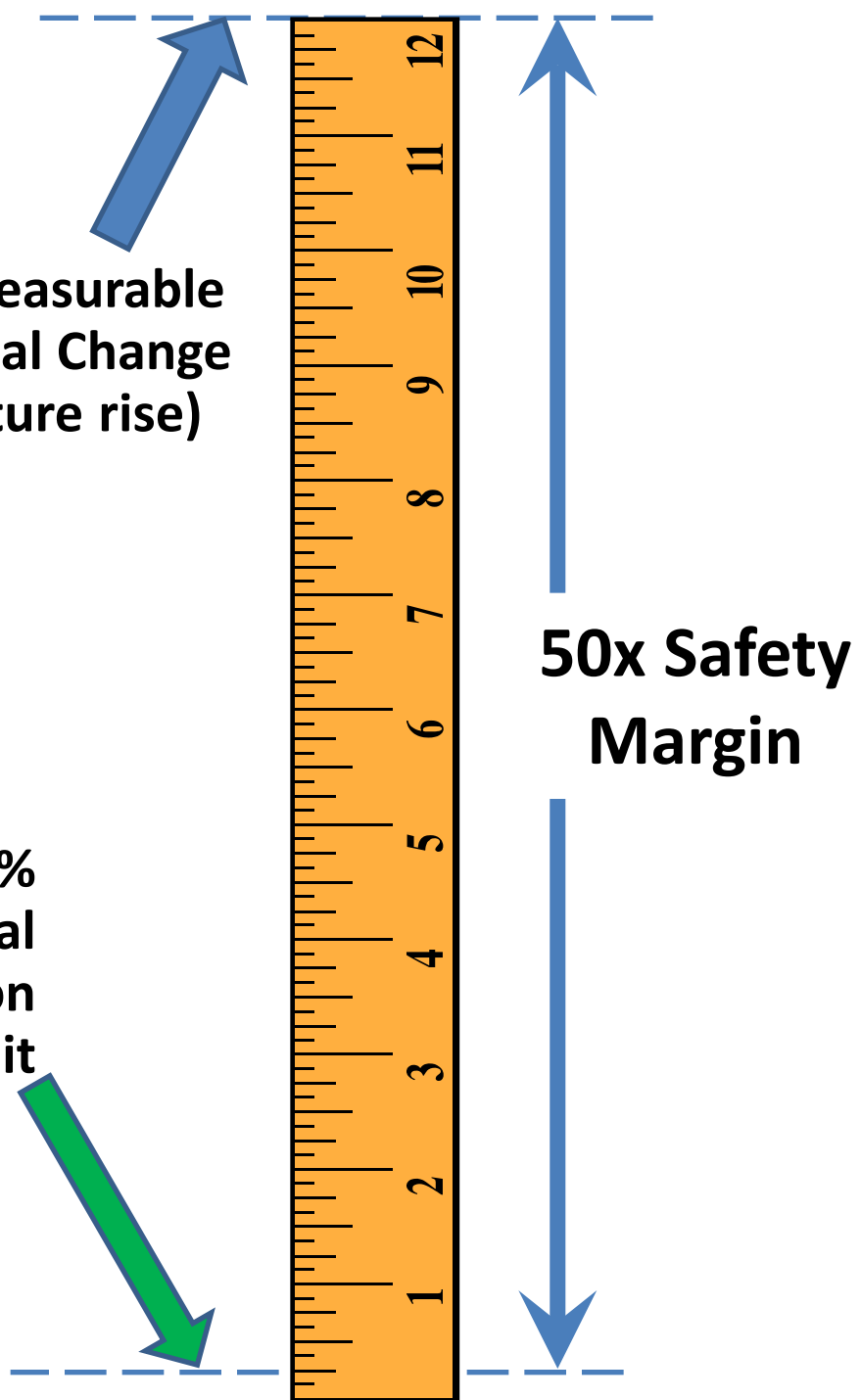
FCC set the standards based on input from various government agencies and private entities

Recent government recommendations to review RF safety standards only for handsets (“SAR”), not wireless cell sites.

**FCC's
RF Safety
Rules**

**Point of Measurable
Physiological Change
(temperature rise)**

**The FCC's 100%
Uncontrolled/General
Population
Exposure Limit**



You're Interfering With Me

- The FCC has spilled some ink on this subject.



Federal Communications Commission DA 03-2196

Before the
Federal Communications Commission
03-20554

In the Matter of
Petition of Cingular Wireless LLC for Declaratory Ruling that the Commission's Policy on the Permissibility of Radio Frequency Interference Reservations is Reasonable and in the Public Interest
Arundel County Zoning Ordinance No. 02-100

MEMORANDUM FOR THE COMMISSION
Adopted: July 3, 2003 Released: July 7, 2003
By the Chief, Wireless Telecommunications Bureau:

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APPENDIX: List of Commenters

INTRODUCTION

1. In this order, we find that federal law preempts provisions of the Anne Arundel County, Maryland ("County") zoning ordinance involving radio frequency interference ("RFI"). The provisions require the owner to receive a County zoning certificate, owners and users of telecommunications facilities must show that their facilities will not degrade or interfere with the County's public safety communications systems.¹ The Ordinance provisions also permit the County to revoke a zoning

¹ See Article 28, §§ 1-101(14B), 1-128(a)(1)(c), 10-125(j)(1)-(2), (k)(1)-(2) of the Anne Arundel County Code ("Ordinance").

17. Taken together, these Commission findings clearly establish that the Commission has sole jurisdiction to regulate RFI, to the exclusion of any zoning or other regulations.

It's Hearing Time!

Making Your Case

- **Before and at the hearing:**

- Find out what the hearing notice range is (typically 300 to 500 feet). Figure out who might have a problem and reach out. Inviting your neighbors over before the hearing to discuss your project, and ham radio in general, is a good move. Be sure to mention you held the meeting at your hearing.
- Get a copy of the planner's report as soon as it's available. Carefully review it. Be prepared to respond to every negative point (if any).
- Prepare ***and repeatedly practice*** an opening and closing speech. Practice responses to potential objections. Watch the clock! If you've never been to a planning hearing before, consider going to observe the process *before* it's your turn!
- Dress in formal attire.



Making Your Case

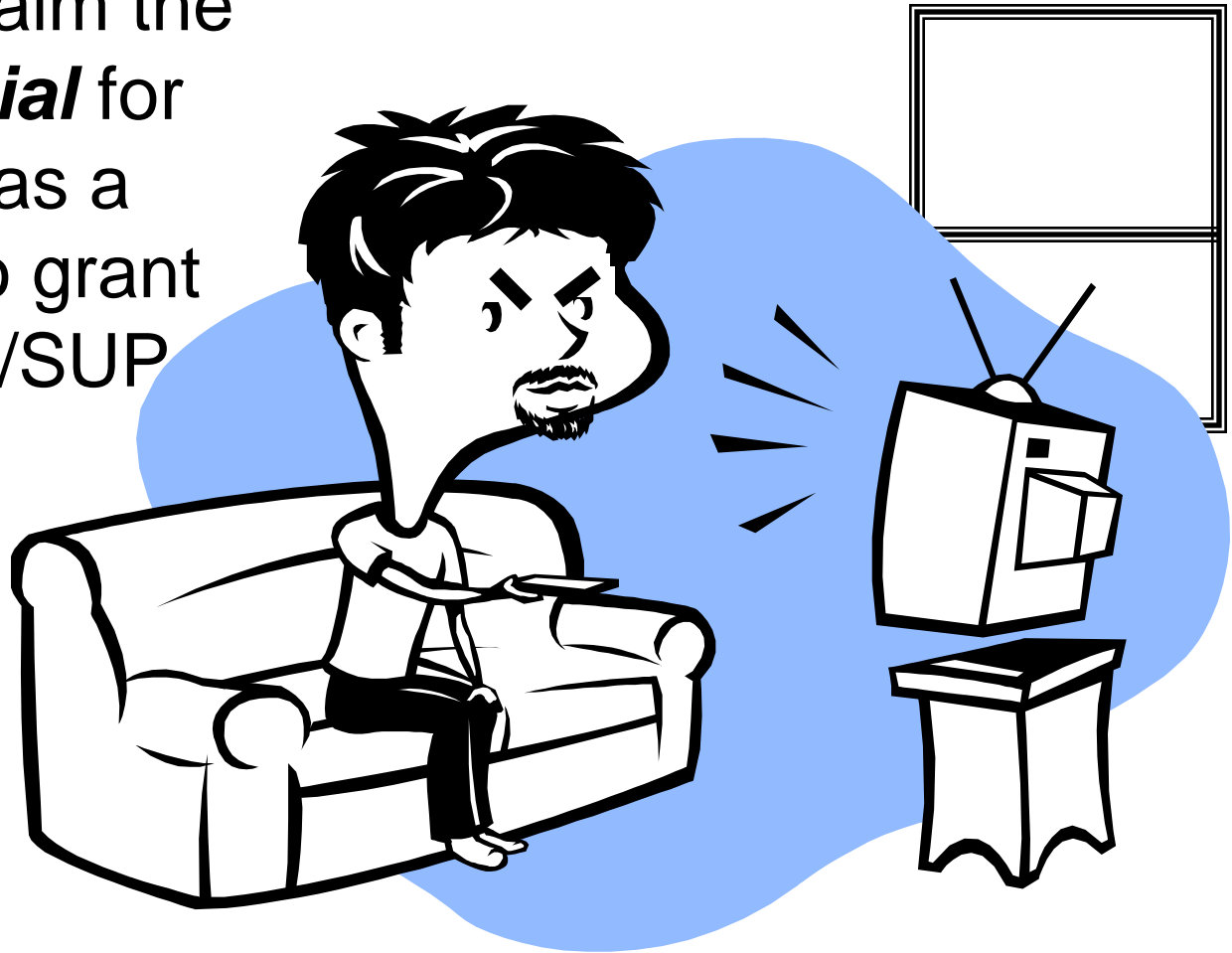
- **At the hearing:**
 - **Explain why under PRB 1 (and perhaps Section 6409(a)) your project is justified *in light of the engineering documentation you provided.***
 - **IT'S CRITICAL TO GET "THE TROOPS" (Hams, friendly neighbors, CERT members, others) TO THE HEARING, AND TO GET THEM TO SPEAK IN SUPPORT OF YOUR PROJECT!!!! (Each fills out a speaker's card).**

Making Your Case

- **If you have to deal with an appeal:**
 - Get a copy of the formal reasons for denial. In your appeal **MUST** be timely, and you must address and appeal every basis of denial.
 - **Explain why the initial decision maker erred. DO NOT ATTACK, but be clear, and explain (again) why, under PRB 1, (and perhaps Section 6409(a)) the project is justified in light of the engineering evidence you provided, and that the initial decision maker erred.**
 - **IT'S EVEN MORE CRITICAL TO GET "THE TROOPS" (Hams, friendly neighbors, CERT, others) TO THE HEARING, AND TO GET THEM TO SPEAK IN SUPPORT OF YOUR APPEAL!!!! (Each fills out a speaker's card).**

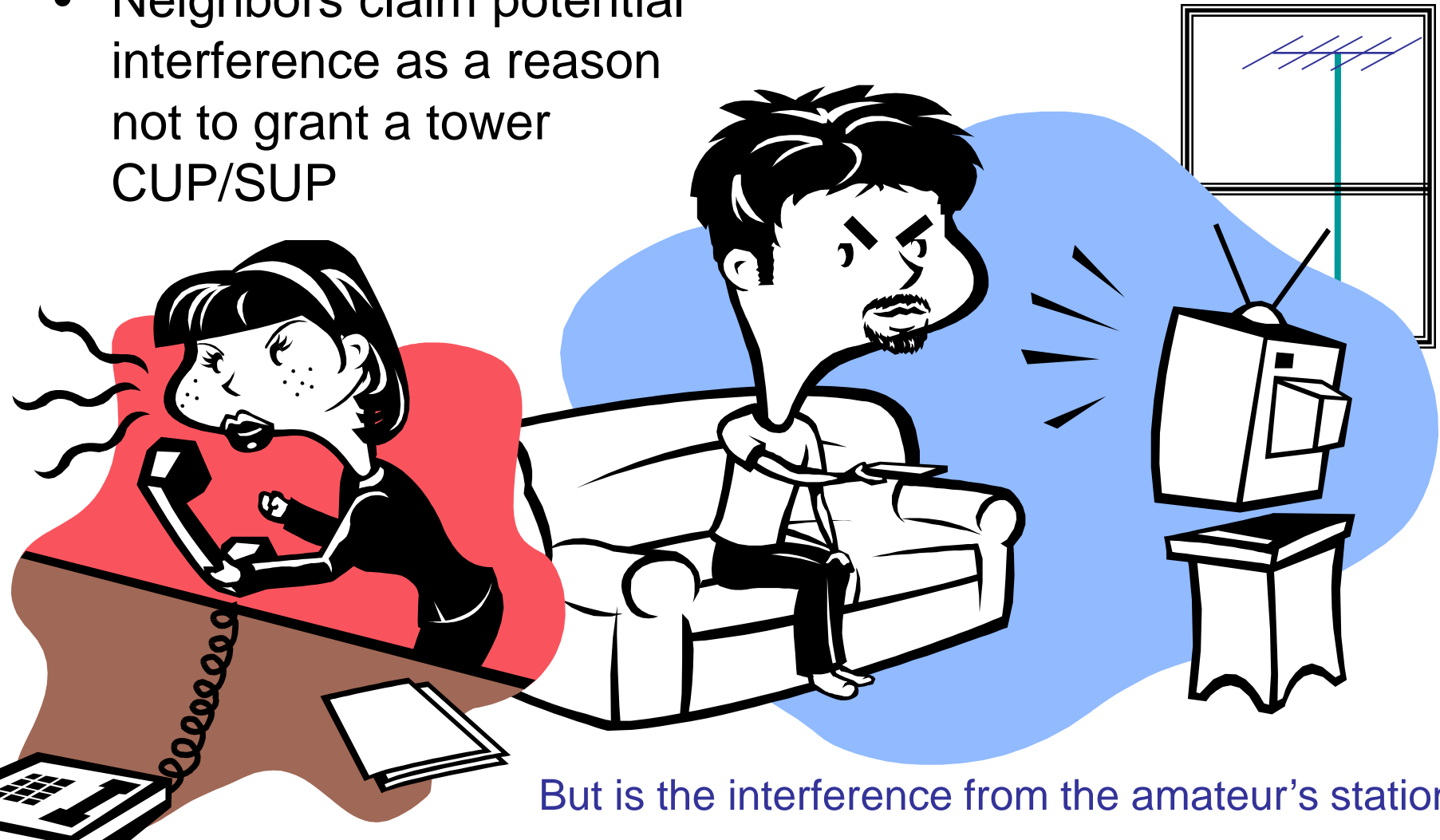
YoIU'sre Intuxzerfeering wizth my Telaevizsion

- Neighbors claim the mere *potential* for interference as a reason not to grant a tower CUP/SUP
- Nope.



Yo__'re Inte_fe_ring w____th my Televi_____sion

- Neighbors claim potential interference as a reason not to grant a tower CUP/SUP



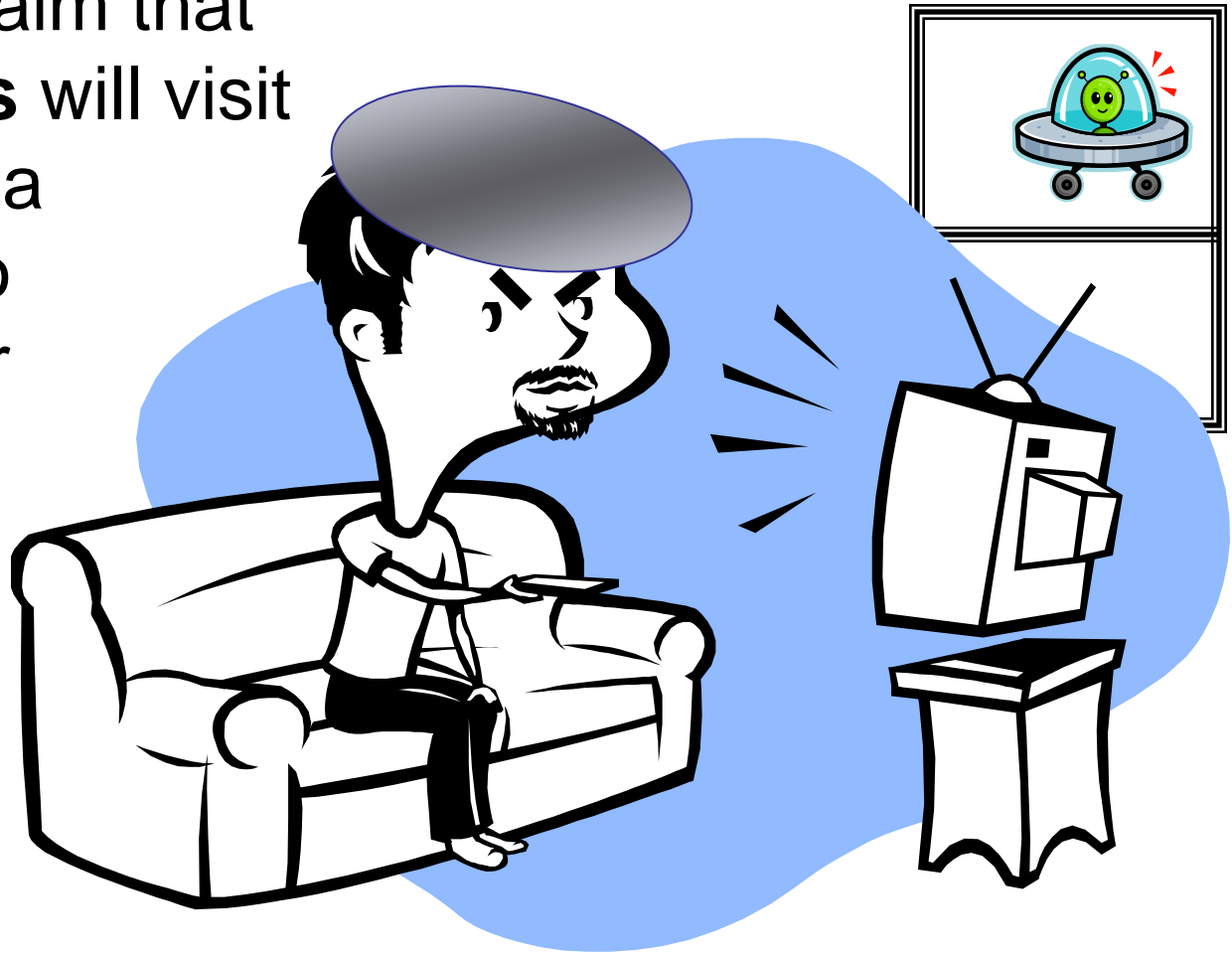
But is the interference from the amateur's station?

Yoiu'sre Intuxzerfeering wizth my Telaevizsion

- Neighbors claim that **space aliens** will visit the tower as a reason not to grant a tower CUP/SUP

- Offer an aluminum foil cap!

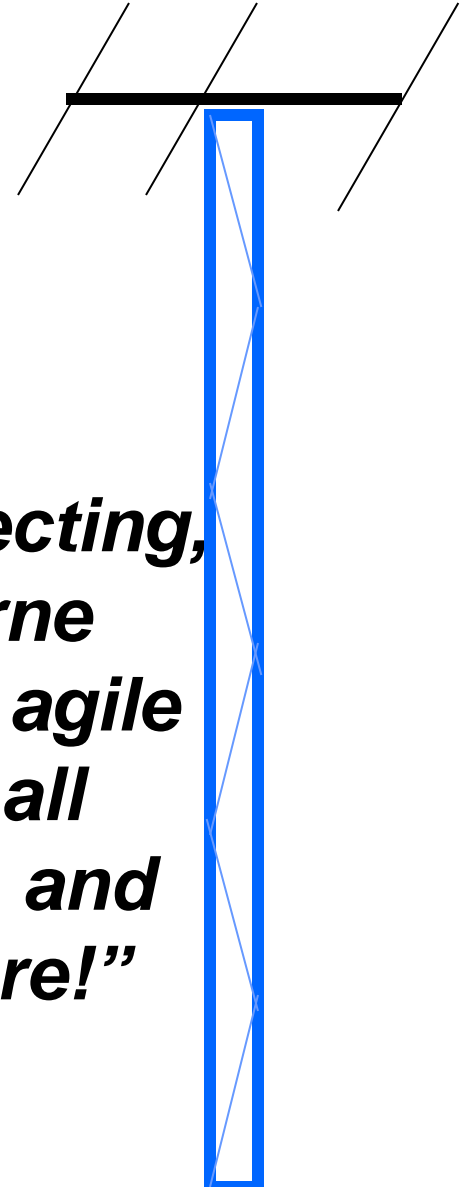
(Just kidding)



Yoiu'sre Intuxzerfeering wizth da Birdz

The neighbors may claim that your tower will be:

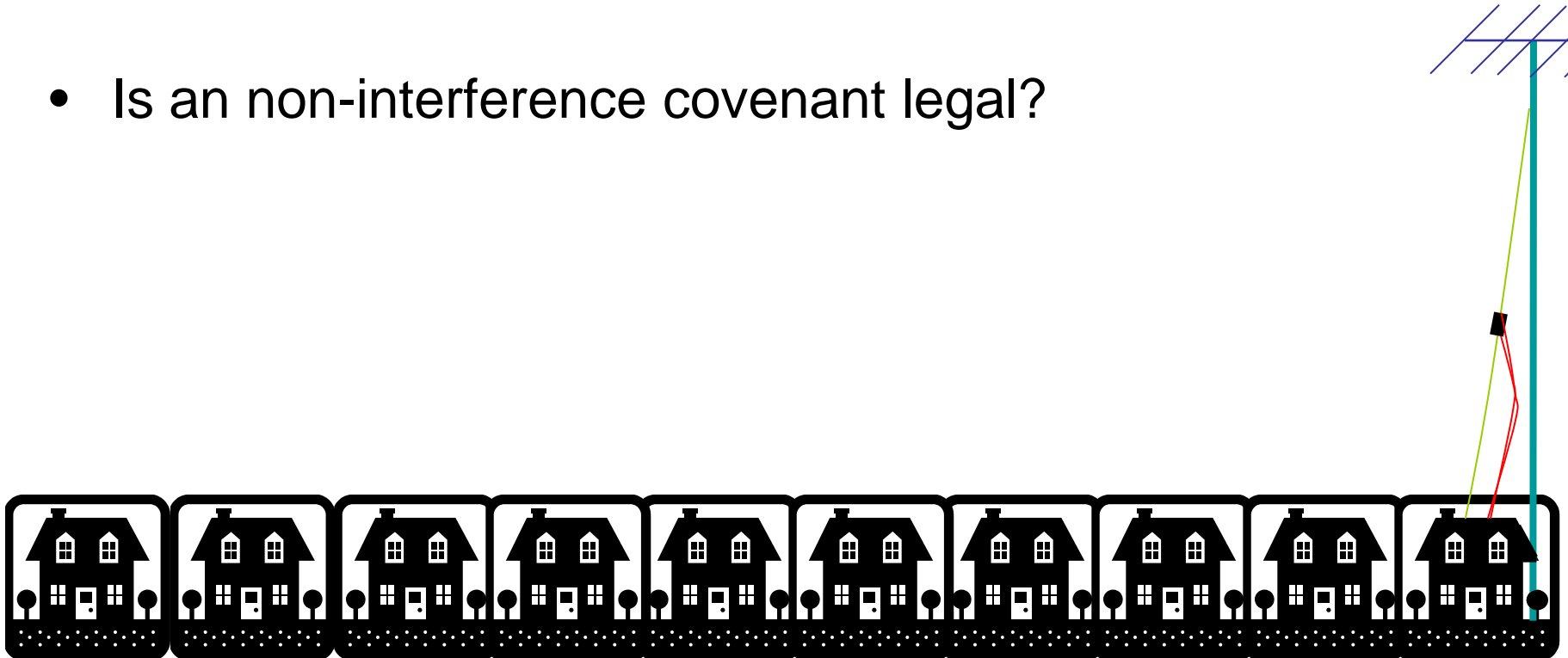
“An anti-American abomination affecting, attracting and annihilating all airborne aviary (and additional adorable and agile animals) approaching at any angle, all absolutely absent any angst, anger, and agitation against amateurs, anywhere!”



CC&Rs: You're Interfering With Me

CCRs: Status of a *private contract* between consenting *private parties*

- CC&R's can be '**enforced**' by others bound by the same promise (called an 'equitable servitude')
- Is an non-interference covenant legal?



H.R. 555

Amateur Radio Parity Act of 2018

AN ACT

- To direct the Federal Communications Commission to amend its rules so as to prohibit the application to amateur stations of certain private land use restrictions, and for other purposes.
- *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 Parity Act of 2018”.

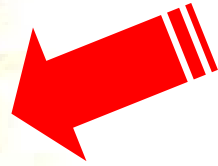
This Is My Official

**“We’re (almost) at the end of
the lecture”**

Slide



Not a space alien



My thanks to Dick Norton,
N6AA, our ARRL
Southwestern Division
Director, for his courage
appointing me as a Volunteer
Counsel some 11 years ago!

**... YOU CAN DOWNLOAD AN
ADOBE PDF OF MY
INCREDIBLE WISDOM
FROM:**

W6JLK.com/cadxa



Government Scum

Nope, sorry, I don't do VC work in planning cases unless it's on the government side (hey, they need the help, too!), but if you find yourself dealing with interference or FCC issues, give me a call!

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PS: If you're reading through these slides without having first suffered through the live lecture, all I can say is, "too bad; so sad!" Certain portions of some of the slides won't make any sense to you if you weren't there for the real thing. Some of the slides may not make sense to people where were actually at the meeting. It's kind of like real life, don't you agree?