



Federal Communications Commission
Washington, D.C. 20554

March 27, 2009

DA 09-680

Mr. Thomas R. Morrison
6 Rudolph Terrace
Yonkers, NY 10701

Dear Mr. Morrison:

This is in response to your petition dated December 5, 2008 concerning the antenna tower you installed at your residence in the City of Yonkers, New York (City). For the reasons set forth below, we decline to act upon your request.

By way of background, you filed a previous request for declaratory ruling regarding your antenna tower, which we denied by letter dated January 31, 2007.¹ In that letter, we explained that the Commission's PRB-1 decision² requires that local regulation of amateur radio facilities must be the minimum practicable to accomplish the local authority's legitimate purpose, but permits the local authority to determine in the first instance what constitutes a "reasonable accommodation" based on the its legitimate purposes, policies and concerns. Our letter also noted that the Commission stated that it does not have the resources to review all state and local laws that affect amateur radio operations, and that local tribunals have authority to review local zoning decisions.

You again request that the Commission find that the City's building permit requirements do not satisfy PRB-1. You state that since we declined to act on your previous petition, the City Planning Board denied your request for a special use permit for your tower, and has indicted you for a misdemeanor for installing the tower without a permit. You also state that you have filed litigation in the United States District Court for the Southern District of New York, requesting that it forestall the criminal trial.

We conclude that these intervening events do not affect our conclusion that, under the Commission's PRB-1 decision, you have not presented an appropriate matter for Commission involvement. Because your dispute with the City fundamentally involves whether its building code complies with PRB-1, and PRB-1 recognizes that local tribunals have the authority to handle appeals of local decisions regarding antenna structures, we believe that the matter you inquire about is in the appropriate forum. We therefore decline to act upon your petition.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹ Letter dated Jan. 31, 2007 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Thomas R. Morrison.

² Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, *Memorandum Opinion and Order*, PRB-1, 101 F.C.C. 2d 52 (1985).