

Received & Inspected

JAN 16 2018

FCC Mailroom

10 January, 2018

Jerry Oxendine.  
ARS K4KWH  
2007 E. Lee Street  
Gastonia, NC 28054

Federal Communications Commission  
Office of the Commission Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Subject: States and Local authorities attempting to regulate or restrict Amateur, CB, and commercial Two way radio.

Dear Sirs:

I am writing to ask for, appeal for, a Declaration , or a Petition for Rulemaking, regarding Part 97 Rules and related Rules of the Commission.

As technology changes, problems arise associated with that rapid rise in said technical advancement. I refer to the problem of 'distracted driving' that states are now attempting to address. This is a valid effort of which I am all for. However, there is an issue that I believe the Commission should now address before it results in court actions and expense to users of two way radio, and in particular, Amateur Radio. Unfortunately a few states, thru ignorance of Commission rules, have enacted, or have attempted to enact, restrictions on the operations of mobile amateur radios. This sometimes includes, or attempts to include, Part 95 users (CB) and Part 90 commercial two way users. These well-meaning, but misguided attempts to usurp FCC oversight of two way radio are wrong, in my opinion for the following reasons.

1. First of all, it violates the Commission's Rules on scope and operation of said equipment by its licensees.
2. It violates the intent of FCC and Congress as to Amateur Radio's role in disasters.
3. It hinders emergency operations of mobile amateur equipment.
4. There is NO evidence that the operations of two way radio has but an insignificant impact on "distracted driving". I call your attention to the CB craze circa 1980 BEFORE there were cell phones. There were thousands and thousands of CB sets installed in otherwise untrained people's cars. IF "distracted driving" would become a problem, would it not have been so during the Smokey & the Bandit days?. Yet

we had never heard of such a thing—until there was the cell phone. Now that are cell phones we hear of distracted driving.

These are some of the reasons I have listed that I believe that FCC should issue a Proposal for Rulemaking (If necessary) or applicable, or a simple Declaration of Exemption for not only Amateur Radio, but all FCC regulated two way radio operators. First of all, there is a distinct difference in the operation of a cell phone and a two way radio. 1. The two way radio is, by its nature, **simplex**. That is, there is ONE flow of information incoming, one flow of information outgoing (transmitting). While any repeater relay station may use duplex (two frequencies), its operation is automatic and the operator's actions are simplex. 2. The cellphone is **duplex** at the outset which allows simultaneous flows of information in both directions. THIS is what causes the "distracted driving" and its because it places an involuntary demand upon the operator and engulfs him/her in that activity in real time. It takes away from the operation of the vehicle by its very nature. The simplex radio allows TIME to respond later. There's no more impact that changing the heater, for example.

I would also at this time call your attention to previous precedent in regards to states' attempting to stop the operation of amateur radios. During the 80's and early '90's some states had onerous scanner laws that prevented the installation of scanner receivers in vehicles. A few granted special permits. They then began to ticket licensed amateur radio operators and SEIZE their equipment. New York and Kentucky were examples of these "enemies" of Amateur Radio. It resulted in court cases in which the Commission issued a Friend of the Court Brief, Docket 91-36. I quote, edited for brevity.

"This federal interest in the amateur service is also reflected in Section 97.1 of our rules, 47 C.F.R. §97.1, which provides that the amateur service exists to "continu[e] and exten[d]...the amateur's proven ability to contribute to the advancement of the radio art." This regulatory purpose is consistent with the Communications Act requirement that "t shall be the policy of the United States to encourage the provision of new technologies to the public."

10. The strong federal interest in the preservation and advancement of the amateur service is also demonstrated by Congress's recent recognition of

the goals of the amateur service in a "Sense of Congress" provision in which Congress strongly encouraged and supported the amateur service. Congress therein directed all Government agencies to take into account the valuable contribution of amateurs when considering actions affecting the amateur radio service. We believe that the strong federal interest in supporting the emergency services provided by amateurs cannot be fully accomplished unless amateur operators are free to own and operate their stations to the fullest extent permitted by their licenses and are not unreasonably hampered in their ability to transport their radio transmitting stations across state and local boundaries for purposes of transmitting and receiving on authorized frequencies. Indeed, as a result of advances in technology making smaller, lighter weight radios commercially available, the Commission has expressly amended its rules to facilitate and encourage unrestricted mobile amateur operations. As we noted in a recent rule making proceeding to modify the rules governing the amateur radio service,

In the age of the microprocessor and the integrated circuit [amateur] equipment is highly portable. It is common for amateur operators to carry hand-held transceivers capable of accessing many local repeaters in urban areas and also capable of reasonably good line-of-sight communication. It appears that the concept of fixed station operation no longer carries with it the same connotation it did previously. For this reason, we propose to delete current rules that relate to station operation away from the authorized fixed station location. This federal interest in the amateur service is also reflected in Section 97.1 of our rules, 47 C.F.R. §97.1, which provides that the amateur service exists to "continu[e] and exten[d]...the amateur's proven ability to

contribute to the advancement of the radio art." This regulatory purpose is consistent with the Communications Act requirement that "it shall be the policy of the United States to encourage the provision of new technologies to the public."

10. The strong federal interest in the preservation and advancement of the amateur service is also demonstrated by Congress's recent recognition of the goals of the amateur service in a "Sense of Congress" provision in which Congress strongly encouraged and supported the amateur service. Congress therein directed all Government agencies to take into account the valuable contribution of amateurs when considering actions affecting the amateur radio service. We believe that the strong federal interest in supporting the emergency services provided by amateurs cannot be fully accomplished unless amateur operators are free to own and operate their stations to the fullest extent permitted by their licenses and are not unreasonably hampered in their ability to transport their radio transmitting stations across state and local boundaries for purposes of transmitting and receiving on authorized frequencies. Indeed, as a result of advances in technology making smaller, lighter weight radios commercially available, the Commission has expressly amended its rules to facilitate and encourage unrestricted mobile amateur operations. As we noted in a recent rule making proceeding to modify the rules governing the amateur radio service,

In the age of the microprocessor and the integrated circuit [amateur] equipment is highly portable. It is common for amateur operators to carry hand-held transceivers capable of accessing many local repeaters in urban areas and also capable of reasonably good line-of-sight communication. It

appears that the concept of fixed station operation no longer carries with it the same connotation it did previously. For this reason, we propose to delete current rules that relate to station operation away from the authorized fixed station location. This federal interest in the amateur service is also reflected in Section

97.1 of our rules, 47 C.F.R. §97.1, which provides that the amateur service exists to "continu[e] and exten[d]...the amateur's proven ability to contribute to the advancement of the radio art." This regulatory purpose is consistent with the Communications Act requirement that "t shall be the policy of the United States to encourage the provision of new technologies to the public."

10. The strong federal interest in the preservation and advancement of the amateur service is also demonstrated by Congress's recent recognition of the goals of the amateur service in a "Sense of Congress" provision in which Congress strongly encouraged and supported the amateur service. Congress therein directed all Government agencies to take into account the valuable contribution of amateurs when considering actions affecting the amateur radio service. We believe that the strong federal interest in supporting the emergency services provided by amateurs cannot be fully accomplished unless amateur operators are free to own and operate their stations to the fullest extent permitted by their licenses and are not unreasonably hampered in their ability to transport their radio transmitting stations across state and local boundaries for purposes of transmitting and receiving on authorized frequencies. Indeed, as a result of advances in technology making smaller, lighter weight radios commercially available, the Commission has expressly amended its rules to facilitate and encourage unrestricted mobile amateur



operations. As we noted in a recent rule making proceeding to modify the rules governing the amateur radio service,

In the age of the microprocessor and the integrated circuit [amateur] equipment is highly portable. It is common for amateur operators to carry hand-held transceivers capable of accessing many local repeaters in urban areas and also capable of reasonably good line-of-sight communication. It appears that the concept of fixed station operation no longer carries with it the same connotation it did previously. For this reason, we propose to delete current rules that relate to station operation away from the authorized fixed station location."

Amateur Radio continues to provide valuable service and develops new technologies, along with industry. Case in point: The screwdriver-style HF antenna, first developed by Don Johnson, ex-W6AAQ (deceased), and in use by amateurs and commercial operators worldwide. HI Q Antennas, an amateur operator and further developer of this type of very effective mobile antenna, developed a rapid-response, high efficiency version of the screwdriver for ALE radios. These allow for the instantaneous operation of ALE, are computer controlled, and used by contract by the US Navy for their ships. These antennas are used in MOBILE service everywhere by amateurs, members of the USAF Auxiliary (Civil Air Patrol), and others. To place restrictions by states would run counter to the intent of Congress and FCC's traditional support of mobile amateur operations as per Docket 91-36. FCC's support of Amateur radio and its MOBILE operations are very clear as per said document. This is just as true as it was then, perhaps, even more so in this day of terror, disaster, and the advent of texting, gaming, and constant attachment by the public to their electronic devices. Also, it would dampen amateur and other communications responses by placing fear within the operator community. Disparate and confusing regulations spread amongst the states, each with their own interpretation of controlling distracted driving, would be counter to emergency operations, even cause problems for volunteers (CAP) whose communications are not even governed by FCC, but by NTIA and USAF Frequency Management. Scenario: USAF Auxiliary member is responding to an authorized USAF mission, talking on his USAF/CAP-issued radio. He is taking traffic while driving to an assignment. State trooper sees a civilian vehicle with an antenna on it, and spots the driver talking on "something". The operator may or may not be in uniform. Cop issues ticket despite protests and attempts at explanation—"Y'all tell it to the judge-AH'M the law 'roun' heah, boy". While such may be an isolated

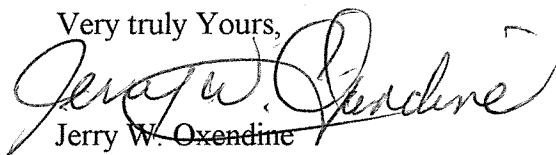
incident, that and other unfair and simply WRONG actions could be taken, hindering amateurs' (and others) ability to respond according to their Federally-authorized privileges, hampering Federal intent as pertains to emergencies.

I strongly believe that such state laws do absolutely NOTHING to prevent distracted driving related to cellphones, texting, and gaming, and there is NO evidence to suggest that amateur radio, or other two way radio operations should be restricted in any way.

I once again quote 91-36 which states:" WE (FCC) believe that the strong federal interest in supporting the emergency services provided by Amateurs cannot be accomplished unless Amateurs are free to own and operate their stations to the fullest extent permitted by their licenses and are not unreasonably hampered in their ability to transport their transmitting stations across state and local boundaries for the purpose of transmitting and receiving on authorized frequencies. ....the Commission has expressly amended its rules to permit unrestricted mobile operations."

Thus, as I have said, any such state laws enacted (Virginia is the latest one attempting to regulate Amateur Radio) go counter to the intent of FCC and Congress and violate CFR 47 at the outset. I, therefore, believe a Declaration regarding the operation of two way radio, amateur or otherwise, is in order. I then officially ask that it be presented to the proper FCC Bureau for a Ruling. This simple ACT would forestall future confusion, problems, and give states guidance as to their authority and to what extent it can be carried. I believe Federal law is on OUR side.

Very truly Yours,



Jerry W. Oxendine  
ARS K4KWH