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Before the
Federal Communications Commission
Washington, DC 20554

PR Docket No. 92-136

In the Matter of

Amendment of Part 97 of the Commission's Rules to Relax Restrictions on the Scope of Permissible Communications in the Amateur Service.

RM-7849
RM-7895
RM-7896

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF PAUL W. SCHLECK, KD3FU

Summary

1. There are clearly several flaws in the current wording of Section 97.113 of the Commission's Rules. Although made in response to public inquiry, and with the best of intentions, strict interpretations of these rules over the years have been extremely detrimental to the Amateur Service. Instead of encouraging technical experimentation by protecting the Amateur Service from commercial exploitation, they have had the unintended effect of stifling many constructive uses of the amateur bands and corresponding advancement of the state-of-the art in communications.

2. In these comments, I advocate a more simply worded test of whether a given amateur communication is to the detriment of the Service or not. This test would essentially be whether the operator him/herself received compensation for the communication. In addition to advocating this simpler rule, I also advocate the explicit recognition of the Amateur Service as both an experimental and a personal communications service, a more permissive policy towards the transmission of incidental or background music under certain circumstances, the compensation exception for instructors engaged in the teaching of a class, and the occasional retransmission of governmental radio services such as time and weather.

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No Operator Compensation is the Optimal Legal Test

3. Indeed, in the footnotes of Docket 92-136 (note #7), the Commission references the position of the American Radio Relay League (henceforth referred to as "the League"), which advocates (among other things) that the question of compensation to the control operator him/herself, rather than the potential benefit of

incidental third parties, be the overriding issue. This legal test makes sense as amateur radio operators are the best judge of what is appropriate communications, as demonstrated from our long and proud tradition of self-enforcement. Economics dictate that no amateur radio operator is going to allow the Service to be commercially exploited with no compensation to him/herself. In addition, there is no incentive for an unscrupulous person to get an amateur license and exploit the Service as "there is no money in it."

4. I would advocate this as the most important (and sole) test of the appropriateness of communication that may be suspected as having commercial content. The Commission's proposed revision of Section 97.113 includes a test of whether such communications constitute "regular use" which is hopelessly vague, and under the right interpretation, might turn out to be even more restrictive than the previous rules it claims to "relax." An individual interested in personal communications has a wide array of choices, including cellular telephone, Citizen's Band Radio, business-band radio, and the Amateur Service. The proposed exception might very well make illegal all uses of the Amateur Service that could conceivably be undertaken in the other alternatives. Although the rumored reference of "excess capacity" mistakenly attributed to Commissioner Sikes would clearly be a poor choice of words, there is certainly some capacity for incidental communications that would be technically illegal under the present rules, but would not change the basic character of the Amateur Service.

5. Indeed, I would argue that the presence of the other services almost guarantees that the majority of individuals interested in personal communications that may potentially violate the letter (as well as the intent) of Section 97.113, would choose the alternative services instead of the Amateur Service (after all, the others have minimal or non-existent licensing and fewer restrictions).

The Amateur Service is Both an Experimental and Personal Communications Service

6. At the heart of these usage debates is the basic question of whether the Amateur Service is an experimental service, or a personal communications service. Clearly the character of the service that has evolved over the years indicates that it is both. The use of the Amateur Service for pure experimentation (such as amateur satellites, packet networks, and repeaters) is inseparably coupled with the use of the Amateur Service for personal communications (communications with other countries through the AMSAT constellation of amateur satellites, use of the packet networks for the relay of bulletins and electronic mail, and the use of VHF repeaters for public service events support). The personal communications drives the experimentation and the experimentation drives the personal use. Historically, the experimentation has always stayed "1 or 2 bands" above the

personal communications use, even back in the days when state-of-the-art referred to radio bands of wavelengths 200 meters and shorter (just above the present-day AM broadcast band).

7. As mentioned above, the crucial legal test to maintain this synergy between the two interests is the compensation (or lack thereof) to the control operator. For this reason, I would not advocate allowing incidental personal business on the amateur bands as that would clearly upset this delicate balance and change the character of the Amateur Service.

Transmission of Incidental Music under Certain Conditions Should Be Permitted

8. When the no-music provision of the Commission's Rules was established in the early part of this century, it was to clearly delineate between the purpose of the broadcast services and communication services such as the Amateur Service. This absolute and restrictive ruling does not take into account many permissible uses of the Amateur Service today. In the case of telephone patching from VHF repeaters, an amateur may encounter "hold music" while making a phone call. No one is going to sit down in one's easy chair in the evening and tune in an amateur repeater to be entertained by "hold music." This is clearly not the use of the Amateur Service for communications outside its scope. However, a well-meaning repeater control operator may shut down the patch, obstructing otherwise appropriate use of the amateur bands and upsetting the delicate balance between experimentation and personal communications.

9. In the case of the authorized amateur retransmission of "NASA Select" audio and video of Space Shuttle missions, the presence of incidental background music makes some retransmissions illegal. Clearly this is an overly restrictive interpretation. Such music is incidental to the transmission and does not provide entertainment value. Such a restriction also upsets the delicate balance between experimentation and personal communications (as it would prevent such worthwhile endeavors in the future, due to the legal risks to the control operator).

10. I would advocate allowing the presence of music, where such music is clearly incidental to the communication and results from the permitted retransmission of other services (such as NASA Select, NOAA Weather, and Department of Commerce Time broadcasts) and common carriers (such as the telephone service). If the Commission is concerned with the impact of such a provision on international treaty, such incidental music could be restricted to 50 Mhz and above (as is the case with the use of experimental communications protocols and the automated relay of third-part traffic).

An Exception for the Compensation of Instructors Conducting Classes is Worthwhile

11. As in any educational endeavor, students can best learn with a combination of theoretical instruction, and concrete example. Removing the restriction on amateur transmissions due to the fact that an instructor happens to be compensated in some way for his/her work is an idea whose time has come. Not only would this have the benefit of allowing many desirable educational techniques used in the instruction of students, it does not conceivably bring with it any undesirable uses of the amateur service (as the instructor would otherwise be bound by the other rules on prohibited transmissions).

The Impact on Amateur Packet and Digital Networks Would be Favorable

12. Since amateur digital networks using ASCII (henceforth referred to as "packet radio") do not have common-carrier protections, the control-operator of a packet-radio station could conceivably be held responsible for any communications passing through his station that may directly or indirectly benefit any third party. This is clearly an excessive restriction, and precludes many types of useful experimentation in packet radio. Recently (early 1991), the Commission was forced to act on a bulletin relayed via packet radio concerning a 1-900 number in support of a political cause (the so called "Desert Storm" bulletin). Several packet-radio operators were issued Notices of Apparent Liability for contributing to the transmission of this bulletin, which violated the current no-business provisions of Section 97.113.

13. It is unfortunate that this matter was reported to the Commission for two reasons. One is that the Amateur Service had already demonstrated its ability to police itself and insure that the Service was used only for constructive, non-exploitative uses (by canceling the message and sending electronic mail to the originator). The Commission was also forced to take action that it probably would have liked to avoid, due to the legal implications and detrimental impact to amateur experimentation. Currently, there is much hesitation in the amateur community to undertake more ambitious technical experimentation in packet radio due to the legal risks involved. Again, the delicate balance is upset.

14. Had my proposed legal test been in place at the time, the Commission would not have had to take such drastic action, and the Amateur Service would have used its discretion in preventing itself from being exploited by commercial interests.

Policy Statements of the American Radio Relay League Should Not Be Taken as Necessarily Reflecting the Public Interest

15. I wish to emphasize that I have the greatest respect for the League. No other organization representing the Amateur Service can provide the kind of information gathering, consensus building, and lobbying the Commission for issues of importance to

the Service than it has done over the years. Their efforts in encouraging the Commission to publish this Notice of Proposed Rulemaking is testimony to this.

16. However, being a representational democratic organization, it must by necessity engineer political compromises when it comes to statements of organizational policy. Although the League can be assumed to have great expertise in matters of the Amateur Service, the positions it advocates have the unavoidable presence of official viewpoints that are dissonant combinations of many, sometimes contradictory, views. If there is a place for consensus-building and presenting policy that is truly in the public interest, it is at the level of the Commission and the federal rulemaking process.

Conclusions

17. For the many reasons I have provided, I advocate that the Commission go further than the League and adopt my proposed "no operator compensation" test as the sole test of whether a given communication constitutes prohibited commercial use of the Amateur Service (with the exceptions that are already present in Part 97, to avoid inadvertently making the Commission's rules more restrictive, which is not the purpose of this Notice of Proposed Rulemaking). To do otherwise requires the addition of "regular use" provisions in the rules that are hopelessly vague and subject to endless interpretation, possibly more restrictive than the present rules. I advocate permitting the transmission of incidental music under the restrictions I have enumerated above. I also support the remaining provisions of the Commission's Notice with respect to the instructor exception and certain, incidental retransmissions of government radio services. The overriding test of any Commission rulemaking is whether it preserves the delicate balance between experimentation and personal communications that has preserved the basic character of the Amateur Service for almost a century.

Respectfully Submitted,

Paul W. Schleck

PAUL W. SCHLECK, KD3FU

Personal Background

18. I presently hold the Amateur station license KD3FU and an Extra Class operator endorsement. I have been an amateur for nearly 6 years (first licensed in November of 1986). While attending the University of Maryland (which awarded me a B.S. degree in Physics in 1989), I was an active member of the University of Maryland Amateur Radio Association, which not only

provided me with the opportunity to experiment with many aspects of amateur communications, but also allowed me to share that expertise with fellow students as well as provide public service communications on their behalf. As president of that organization, I had the opportunity to manage the operations of a sizable college amateur radio station equipped with a full range of HF and VHF voice and data equipment for both terrestrial and satellite communications.

19. I currently reside in Omaha, Nebraska where I am professionally employed as a Programmer/Analyst in the fields of Unix (R) and TCP/IP (a suite of communications protocols widely used in commercial, educational, and governmental computer networks). I am pursuing an M.S. in Computer Science at the University of Nebraska at Omaha and direct a special interest group for communications within the campus chapter of the Association for Computing Machinery (ACM). I am also a volunteer Technical Specialist in the Nebraska section of the League's Field Organization, assisting fellow amateurs with packet radio, TCP/IP, and amateur-radio-related computer software.