

-Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 97 of the) RM- 11831
Commission's Amateur Radio Service)
Rules to Reduce Interference and)
Add Transparency to Digital Data Communications)

To: The Chief, Wireless Telecommunications Bureau
Via: Office of the Secretary

Reply to recent comments and ex partes

1. The recent round of comments and ex parte filings from Gordon Gibby,¹²³⁴ on RM-11831 demonstrate a complete lack of knowledge and understanding of what the RM is intended to address—interference reduction and open amateur digital modes. The filings have absolutely nothing to do with the intent of RM-11831, with a single exception where the filing gave no evidence against removal of 97.221(c)¹, other than demonstrating elimination would have "**a vanishingly insignificant impact**" on stations operating under the rule. The proceeding has nothing to do with Winlink system compliance, Pactor, baud rate, emergency communications, or an email service for off shore boaters. It deals with the key issues that digital modes in the amateur service must be able to be monitored by third parties, and eliminating a source of interference.

2. The multiple filings and ex partes only referenced a single digital mode and one application of that mode, Winlink, ignoring the broader context of RM-11831. I won't waste the Commission's time by attempting to rebut all the filings, which are based on flawed statistics and questionable data gathering methods², assumptions, guesswork, luck³, and in some cases citing non-authoritative sources⁴. Perhaps

1 <https://ecfsapi.fcc.gov/file/10408063816674/FCCRM11831-2.pdf>
2 <https://ecfsapi.fcc.gov/file/10723230403421/IncidenceCalculations.pdf>
3 <https://www.qsl.net/nf4rc/2019/SpyingOnWINLINKV2.pdf>
4 <https://ecfsapi.fcc.gov/file/107301549501394/IncidenceCalculationsExParte0730.pdf>

the most egregious aspect of these filings is the personal attacks and attempts at character assassination of Dr. Rappaport, myself, and others^{5 6 7 8}. There were several areas of concern expressed in RM-11831 but the author of these many filings, and others, failed to take note of the statement of purpose in RM-11831: “This instant petition seeks to resolve two of the outstanding issues: it proposes only minor rules changes to: i) reduce levels of amateur to amateur interference from stations operating under Part 97.221(c), and ii) ensure all transmissions remain open for over-the-air eavesdropping of station identification, message content, and capable of being fully decoded with publicly available methods as required by Part 97.113(a)(4).”⁹ I would also point out, once again, that Dr. Rappaport is not responsible for RM-11831, either directly, or indirectly, a fact that seems to not be understood by the author in the mentioned filings, which have absolutely nothing to do with the stated goals of RM-11831.

3. Since ARSFI (Amateur Radio Safety Foundation Inc.), and supporters, have deviated from the intent of RM-11831 and chose to instead focus on a single mode, Pactor, and it’s implementation by Winlink, a few points deserve discussion.

4. An attempt by the ARRL to bring all sides together to resolve outstanding issues with RM-11708, WT 16-239, and RM-11831 failed due to ARSFI’s unwillingness to compromise on over the air decoding, preferring to remain with their recently opened message viewer “window”¹⁰ as an adequate form of monitoring. If the “window” is to be accepted as a substitute for over the air (OTA) monitoring of digital modes, that don’t have an OTA decoder available, it must be applied equally to all new and current modes that don’t allow third party OTA monitoring, including peer-to-peer modes. There are

5 <https://ecfsapi.fcc.gov/file/10406909918891/FCCRM11831-1.pdf>

6 <https://ecfsapi.fcc.gov/file/10720527000059/RM11831-July20.pdf>

7 <https://ecfsapi.fcc.gov/file/10730701023399/ResponseToRappaportJuly24Filing.pdf>

8 <https://ecfsapi.fcc.gov/file/10722131064325/REPLYtoCarsonExParteFilingProposal.pdf>

9 <https://ecfsapi.fcc.gov/file/100918881206/PETITION%20FOR%20RULEMAKING.pdf> ¶ 5

10 The message viewer “window” is an internet web page, available only to licensed amateur radio operators, after registration and approval by Winlink. The “window” allegedly shows all messages transiting the Winlink system.

no assurances any “window” would be a true representation of data, remain available on demand, and would require an internet connection to view. The present voluntary “window” should not be accepted as an alternative to traditional peer monitoring unless the creation and operations of this approach is clearly required by Commission Rules and a responsible licensee is accountable for its validity and accuracy. The “window” would be difficult to enforce and require additional burdensome rules for all concerned. ARSFI has communicated that their “window” is only a temporary measure¹¹.

5. Recent additions and actions by ARSFI, message viewer, forced CW identification, forced busy detection, and enforcement of Part 97 rules¹², are commendable from the stand point of aiding their clients and gateway operators compliance with FCC rules, “which most have ignored”¹², but it also puts ARSFI in the rather awkward position of enforcing Part 97 rules with no legal authority to do so. The Winlink system is not governed by any FCC rules I’m aware of but, by assuming the duties of control operators, shifts the ultimate responsibility of Part 97 compliance squarely on the entire Winlink administration. Despite ARSFI attempts to bring their system into compliance with various Part 97 rules they continue to be at odds with control operator and third party communications rules. Requests for information regarding the status of any actions by ARSFI to address these problems have gone unanswered as of this writing. (See appendix) There are also unanswered questions about how the Winlink system, that handles in excess of 50,000 emails a month on average, is remotely in compliance with the “prohibited transmission” provisions of §97.113(a)(5), when multiple alternate email services are readily available, *e.g.* www.ocens.com, and how the ARSFI Winlink operation avoids being classed as a common carrier or a commercial mobile radio service?

6. There is currently some work being done to develop an OTA decoder for the single mode, Pactor, mentioned in the mass of filings, and while one proof of concept experiment of an off air Pactor decode (one message) has been presented¹³ that demonstration still required 100% capture of all packets, and

11 <https://amrron.com/2019/05/23/amrron-temporarily-suspends-the-use-of-winlink-system-white-paper/>

12 <http://www.cruisersforum.com/forums/f13/winlink-3rd-party-rules-to-be-enforced-221229.html>

13 https://ecfsapi.fcc.gov/file/1073182572879/KX4O_Demonstration_OTA_Winlink_Decoding.pdf

post-processing manipulation. The method used shows further work is needed to be useful for everyday monitoring. Again this is mode specific and no information is presented for other possible modes. The intention of RM-11831 is to ensure all digital modes, present and future, remain open to third party monitoring to enable the self-policing of amateur spectrum, and to move all ACDS operations into contiguous spectrum as suggested in the IARU (International Amateur Radio Union) Region 2 bandplan¹⁴, which also requests unattended/automatic operation be limited on the HF bands. In at least two filings^{15 16} it was stated that a decoding solution should ideally be open source but not necessarily. A proprietary decoder, either hardware or software, would be acceptable so long as it was available at no cost or minimal cost. Or the mode in question was decodable by simply owning the equipment. (D-Star, DMR, etc.)

7. The majority of opposition to RM-11831 is in defense of a single mode, Pactor, it's use by a single system, Winlink, and driven by the ARSFI threat to "close shop"¹⁷. These opposition comments completely miss the intent of the petition, which is clearly spelled out, interference reduction and open over the air decoding of all digital modes in current, and future, amateur use.

8. How the Commission rules on RM-11831 will determine whether or not the amateur service remains a self-policing, transparent, experimental, hobby service¹⁸, or a quasi-commercial, common carrier, private messaging network closed to outside monitoring by other amateurs or the general public.

Respectfully submitted,
/s/
Ron Kolarik ARS K0IDT

14 <https://www.iaru-r2.org/documents/explorer/files/Plan%20de%20bandas%20%7C%20Band-plan/R2%20Band%20Plan%202016.pdf>

15 <https://ecfsapi.fcc.gov/file/10428309711643/Reply%20to%20comments.pdf> ¶ 3

16 <https://ecfsapi.fcc.gov/file/10724035705944/NYU%20Ex%20Parte%20Filing%20-%2007.24.19.pdf> footnote 45

17 <http://www.cruisersforum.com/forums/f13/pactor-banned-from-the-usa-216519.html>

18 <https://spectrum.ieee.org/tech-talk/telecom/wireless/is-ham-radio-a-hobby-a-utility-or-both-a-battle-over-spectrum-heats-up>

Appendix

Ron Kolarik
3923 Worthington Ave.
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rkolarik@neb.rr.com

Lor Kutchins W3QA
President,
Amateur Radio Safety Foundation, Inc.
Winlink Development Team

August 25, 2019

Dear Mr. Kutchins

I have not yet received an answer to my letter of 30 July 2109 concerning 3rd party and Winlink control operator questions. If you recall, in that letter, I requested that the "mode" in use be added to the message viewer window to ensure proper modes/bandwidths and appropriate frequencies were being used. Has any progress has been made on adding "mode" to the viewer window? Is there another database that can be accessed with that information? I know the information is available to select Winlink administrators since there were at least two exchanges with off shore boaters running Pactor 4 illegally, and a quick search through the viewer turns up a host of other, potentially illegal, connects by US stations to off shore Winlink gateways that only accept wide bandwidth modes. Without the mode information available as part of the viewer it's impossible to determine the legality of these connects.

If you would please answer the following questions to clarify the ARSFI position on these items it would be appreciated.

1. Is a database containing mode/bandwidth information available to anyone, other than a small group of Winlink administrators?
2. Are US licensed stations connecting to non-US gateways, operating outside of the US ACDS sub bands, with wide bandwidth modes not permitted under 97.221(c)?
3. Does ARSFI consider anyone activating a Winlink gateway to be the control operator of that gateway, even if the activating station is not US licensed?
4. What, if anything, is being done to address 3rd party issues detailed in my previous communication of 30 July?
5. How is Winlink not in violation of §97.113(a)(5) " Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.", while *regularly* handling 50,000 email messages per month, when existing alternate services are readily available?

For your convenience, please find attached, for your reference, my original July 30, 2019 letter sent to you and other Winlink/ARSLI supporters and various ARRL officials.

I look forward to hearing from you soon.

Ron Kolarik K0IDT

Cc: Dan White <hdwhite@charter.net>,
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LETTER of 30 July 2019

Hi Lor,

I'm writing you concerning apparent compliance problems that still exist on the Winlink system. While it's commendable that you are trying to clean up your 3rd party problem, after ignoring it for several decades, there seem to be problems with the messages you are currently allowing on the system, IN THE AMATEUR RADIO PART 97 HF BANDS. By Winlink's own definition of third party communications:

"Third Party Traffic

Message or phone patch traffic passed from a *third person or entity* (italics and underline added) via one amateur to another. Between hams in different countries, third party traffic on amateur frequencies is prohibited unless a formal agreement to allow it has been reached between the respective countries".

I had an exchange with Tom Whiteside, AN ARSLI BOARD MEMBER AND DEVELOPMENT TEAM MEMBER, over one message that I flagged (below), and at the time he was under the mistaken impression that a message sent thru a US gateway by a Norwegian sailor for delivery to a third party was acceptable because delivery was over the internet, which is a direct contradiction of current

Winlink policy and the actual Part 97 third party rules. Your new third party rule enforcement to ensure compliance is a step in the right direction, but any messages to or from the internet, including weather, GRIBS, or saildocs requests, is still in violation if the requesting station isn't on the list of countries the US has a third party agreement with. I refer you back to Winlink's own definition of what constitutes a third party and also to:

47 U.S. Code § 153 definition of person.

<https://www.law.cornell.edu/uscode/text/47/153>

Definitions (39) Person

The term “person” includes an individual, partnership, association, joint-stock company, trust, or corporation.

I'm not certain that position reports run afoul of the rules since they are essentially one-way, that would seem to need a clarification from the FCC, the main issue is clients and sysops are still ignoring, or otherwise attempting to sidestep Part 97 as you noted in your 3rd party notice sent out over the Winlink system.

"We wish this was not necessary, but we have relied on US client and gateway operators to know the rules and obey them, **and most have ignored them**, unfortunately for all of us."

Lor W3QA

Judging by some of the email exchanges on the viewer it's not just US stations and gateways at fault. Thanks for catching the US sailor asking whether he could use Pactor 4 off shore, and correcting the bad advice he received from a ZL gateway operator. You currently have clients and sysops actively attempting to skirt the rules, it's readily apparent by some of the message content, or the subject line. Keyword scanning won't catch all of this, it needs a live op to read every single message to see some of the attempts at avoiding Part 97 rules.

I've asked before, as a feature request for the viewer, to have the mode published along with the other information. I think you said it was under consideration. It would be useful to know if a station was operating with modes not allowed, or on frequencies inappropriate for the mode, as per the above US amateur that was told, incorrectly, that Pactor 4 was legal for US stations in IARU Region 3. How much of this illegal mode activity that occurs without being caught would be worth knowing to aid compliance.

The internet is definitely a third party (entity) message source or destination according to your own definition. Would you please address the apparent discrepancy in what Winlink currently allows, for non-third party country traffic, as opposed to the actual rule and Winlink definition? If you choose to act on this I would suggest giving some warning of a policy change, and a date of implementation, rather than leaving clients suddenly out in the cold.

There is also another problem with the below email exchanges. According to Winlink's definition of control operator the Norwegian call activating the gateway is the control operator of a US licensed station?? This begs for an explanation especially in light of the fact that the only “control” being exercised is activating a gateway station, which is already operating under automatic control provided by a designated control operator (usually the station licensee, unless otherwise documented). Local control requires the operator be present at the control point (§97.3(a)(31)), remote control requires the use of a control operator who indirectly manipulates the operating adjustments in the station through a control link to achieve compliance with the FCC Rules. (§97.3(a)(39)), and automatic control

requires the use of devices and procedures for control of a station when it is transmitting so that compliance with the FCC Rules is achieved without the control operator being present at a control point (§97.3(a)(6)). How is it possible for a station operating under automatic control (RMS) considered to be under the control of the activating station when that operator is not at the RMS control point (local control), and can not indirectly control the station functions through a control link (remote control)?

Since the inception of Winlink 2000, its participating stations have utilized the **Internet** to automatically forward of traffic, and only using the HF Amateur bands for its end-user community. This, of course, is much faster, and saves valuable HF spectrum for real-time end-user connections. On HF Pactor, the radio users of the Winlink 2000 system initiating a contact are present as control operators, and therefore, WinLink 2000 operations do not fall within the category of "automatic control" per U.S. FCC Part 97.221. As described within the FCC Part 97.221, such operations are either under "automatic control " or "local or remote control."

I look forward to your response.

Ron K0IDT

Subject: Re: Potential Amateur Rule Violation -
DDTQQN95SYEX

Date: Wed, 29 May 2019 06:26:36 -0500

From: Tom Whiteside <tomw@ecpi.com>

To: Ron Kolarik <raoul12@neb.rr.com>

CC: amateur-abuse@arsfi.org

All this applies to the communication over the radio. The rest is done via the Internet outside of Part 97.

Tom N5TW
Sent from my iPhone

On May 29, 2019, at 1:08 AM, Ron Kolarik <raoul12@neb.rr.com> wrote:

Tom,

I'll agree it's a common point of confusion but, if a message is sent by the first party control op to a second party control op, for forwarding to a third party, that seems to meet the definition in 97.3(47).

Any message becomes a third party communication if it's destined for delivery, outside of the control ops involved, or messages, originating from outside sources, forwarded for delivery by one control op to another also meet the third party definition.

Ron KOIDT

On 5/28/2019 11:18 AM, Tom Whiteside wrote:

Hi Ron,

This is a common point of confusion. If you look at Part 97.3 definitions (#47) which is a definition of 3rd party communications:

"(47) Third party communications. A message from the control operator (first party) of an amateur station to another amateur station control operator (second party) on behalf of another person (third party)."

The message you flagged is being sent by a Norwegian amateur radio operator and that does not meet the definition of 3rd party traffic. He is a first party.

Part 97.115(c) states: "(c) No station may transmit third party communications while being automatically controlled except a station transmitting a RTTY or data emission. "

So if it were 3rd party which it is not, it would be allowed by a Winlink station under this provision.

Tom N5TW

-----Original Message-----

From: Ron Kolarik [<mailto:raoul12@neb.rr.com>]

Sent: Sunday, May 26, 2019 5:53 PM

To: Tom Whiteside <tomw@ecpi.com>

Cc: amateur-abuse@arsfi.org

Subject: Re: FW: Potential Amateur Rule Violation -
DDTQQN95SYEX

Tom,

The problem with that email is the US has no 3rd party treaty agreement with Norway. The list of countries the US can handle 3rd party messages with is very short <http://www.arrl.org/third-party-operating-agreements>

The Norwegian station in effect asked a US station, in this case the gateway sysop, to forward a message to a 3rd party via the internet. The reverse condition is also problematic if a US gateway forwards 3rd party messages to the Norwegian call from the internet. The Norwegian also asked the gateway sysop to retrieve and forward saildocs weather information, that's still forwarding 3rd party communications to a station licensed in a country we have no agreement with.

Ron K0IDT

On 5/26/2019 7:55 AM, Tom Whiteside wrote:
I see no problem with this one.

Tom N5TW
Member Winlink Development Team

-----Original Message-----

[From:SERVICE@winlink.org](mailto:SERVICE@winlink.org)
[<mailto:SERVICE@winlink.org>]
Sent: Saturday, May 25, 2019 10:14 PM
[To:amateur.abuse@arsfi.org](mailto:amateur.abuse@arsfi.org)
Subject: Potential Amateur Rule Violation -
DDTQQN95SYEX

The below message was flagged as violating Amateur radio rules.

Reporter [email:raoul12@neb.rr.com](mailto:raoul12@neb.rr.com), IP address: 76.84.142.95

Attachments to the original message (if any) are attached.

====

Date: Fri, 24 May 2019 18:24:00 -0000
[From:LA9XZ@winlink.org](mailto:LA9XZ@winlink.org)
[Reply-To:LA9XZ@winlink.org](mailto:LA9XZ@winlink.org)
Subject: //WL2K Re: Hello

[To:sv.pelican@myiridium.net](mailto:sv.pelican@myiridium.net)
Message-ID: DDTQQN95SYEX
X-Cancel: 2019/06/16 02:58
X-Source: LA9XZ
X-CMS: CMS-A
X-WL2KPrecedence: Routine
Content-Type: text/plain
Content-Transfer-Encoding: 8bit

Hello Pelican crew!

Norwegian day was a huge success! served a wild pig I was helping to hunt the night before. everyone left with some unforgettable memories ;)

We are still in Hanaiapa. such a nice little place, we are trying to get the tax return things done on Hiva Oa before heading on, changing plans every day...
Ouch, out of wine!? we still have 5-6l of panamanian wine left, saving it for special occasions; used up most of our budget in panama, so now we will live on what we have in the boat.

Yes The Vagabond engine was taking in water via the seawater pump apparantly. so tehy will stay here another couple of weeks I guess, but it is not a bad place to be.

Hopefully we will go to Fatu Hiva by the start of next week. we plan to stay maximum a week there before going to Taiohae to get some fuel and

gas etc.

Hope you get to repair the steering soon!

Axel