

2007-12-11 10:00 AM

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

**FILED/ACCEPTED**

**DEC 11 2006**

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
 )  
 Amendment of Part 97 of the Commission's )  
 Rules Governing the Amateur Radio Services )  
 )  
 Amendment of Section 97.111 of the Amateur )  
 Radio Service Rules to Limit Transmissions of )  
 Information Bulletins )  
 )  
 Conforming Amendments to Part 97 of the )  
 Commission's Rules to Implement the World )  
 Radio Conference 1997 Final Acts )  
 )  
 Amendment of Part 97 to Provide Color-coded )  
 License Documents )  
 )  
 Amendment of Part 97 to Allow Instant )  
 Temporary Licensing )  
 )  
 Amendment of the Amateur Service Rules to )  
 Limit One-Way Voice Broadcasting on )  
 Frequencies Allocated to the Amateur Service )  
 )  
 Amendment of Sections 97.111 and 97.113 of )  
 The Commission's Rules to Curb Certain )  
 Abuses in the Amateur Radio Service )  
 )  
 Amendment of Section 97.3(a)(26) to Establish )  
 Two Classifications of Information Bulletins )  
 )  
 Amendment of Section 97.305(c) to Authorize )  
 Image Emissions in Additional High Frequency )  
 Segments )

**WT Docket No. 04-140**

To: The Commission

**PETITION FOR PARTIAL  
STAY OF EFFECTIVE DATE OF RULE**

No. of Copies rec'd 014  
List A B C D E

ARRL, the National Association for Amateur Radio, also known as the American Radio Relay League, Incorporated (ARRL), by counsel and pursuant to Section 1.429(k) of the Commission's rules [47 C.F.R. §1.429(k)], hereby respectfully requests that the Commission stay the effectiveness of a minor portion of a single rule subsection modified by the *Report and Order* (the R&O), FCC 06-149, released October 10, 2006, 71 Fed. Reg. 66460 *et seq.* pending action on ARRL's contemporaneously filed Petition for Partial Reconsideration with respect to the same matter. In support of this Petition for Partial Stay of Effective Date of Rule, ARRL states as follows:

1. As is more fully discussed in the Petition for Partial Reconsideration, the R&O amended Parts 1, 2 and 97 of the Commission's rules governing the Amateur Radio Service to modernize, streamline and remove unnecessary restrictions on Amateur Service licensees in a number of disparate respects. Among these amendments was the revision of the frequency segment of the 80-meter Amateur Service High Frequency (HF) band on which Amateur stations are authorized to transmit telephony (voice) communications. In several respects, the extent of this action in particular created unintended consequences which, if the rule is not partially stayed, will be <sup>1</sup> substantially adverse to the interests and ongoing contributions to the radio art of a significant and growing number of Amateur Radio licensees. It will also affect ongoing Amateur Radio fixed and mobile operations, and cause ongoing Amateur Radio data communications systems used in emergency and disaster relief communications to have to shut down completely in the 80-meter Amateur band.

2. The R&O in this proceeding, in one respect, created consequences that the Commission clearly did not intend, in the course of a very substantial and unexpected

---

<sup>1</sup> The effective date of the new and modified rules adopted in the R&O is December 15, 2006. This limited Petition for Partial Stay of Effective Date of Rule seeks to maintain the *status quo ante* pending the Commission's review of the Petition for Partial Reconsideration.

expansion of the 80-meter telephony subband. Specifically, in the relocation of the “dividing line” between the RTTY/data/ telegraphy (narrowband) segment and the telephony/image/telegraphy (wideband) segment of the 3.500-4.000 MHz band from 3750 kHz to 3600 kHz,<sup>2</sup> the Commission eliminated access to the 3620-3635 kHz segment by licensees who are currently conducting or using, or planning to conduct or use, automatically controlled, narrow-bandwidth digital communications, which are permitted in that segment now. The prohibition of that access in the R&O is an unintended consequence of the very substantial telephony subband expansion at 80-meters (which was considerably greater than that proposed in the Notice). That the result was unintended is manifest because the rule section<sup>3</sup> permitting automatically controlled narrow bandwidth digital communications in the 3620-3635 kHz segment was unchanged by the R&O. However, the deletion of RTTY and data as permitted emissions in the 80-meter band segment above 3600 kHz completely precludes the operation of automatically controlled, narrowband data stations in the 3620-3635 kHz segment. This circumstance will occur on the effective date of the new rules, December 15, 2006, if not stayed by the Commission. It is the one issue that ARRL asks the Commission to revisit in the contemporaneously filed Petition for Partial Reconsideration. ARRL asks specifically that the Commission stay the portion of the new rules, pending final action on the ARRL’s Petition for Partial Reconsideration, which would permit operation of wideband (telephony and image) communications between 3600 kHz and 3635 kHz, and which would prohibit the use of RTTY and data communications in that same segment. *ARRL does not request a stay of the remainder of the R&O, nor even the portion of the R&O*

---

<sup>2</sup> See, the R&O, Appendix, Rule Section 97.301(b), and the text, at Paragraph 11.

<sup>3</sup> See, Section 97.221(b) of the Amateur Service Rules.

that would, for the first time, permit telephony and image communications between 3635 kHz and 3750 kHz.

3. Section 1.429(k)<sup>4</sup> of the Commission's rules provides that the Commission may stay the effective date of a rule pending reconsideration by the Commission upon a showing of "good cause." The Commission evaluates whether good cause exists to grant a stay under the standard set forth in *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958) as modified in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.* 559 F.2d 841, 843 (DC Cir. 1977). Under the presently applicable *Holiday Tours* standard, the petitioner must demonstrate all of the following:

- (1) that it is likely to prevail on the merits;
- (2) that it will suffer irreparable harm if a stay is not granted;
- (3) that other interested parties will not be harmed if the stay is granted; and
- (4) that the public interest favors grant of the stay.

Here, ARRL submits that the four-part *Holiday Tours* test is met in every respect.

4. The Petition for Partial Reconsideration is likely to prevail on the merits. It requests the minimum relief necessary in order to remedy an unintended and unexplained consequence of a very substantial expansion of the 80-meter telephony subband. The expansion of that subband was far greater than requested in the ARRL Petition for Rule Making that led to the Notice of Proposed Rule Making in this proceeding. The Notice had proposed that the telephony/image subband at 80 meters be expanded only to a lower edge of 3725 kHz. It was only in the Report and Order that the Commission decided,

---

<sup>4</sup> 47 C.F.R. §1.429(k).

based on the comments of only six individuals, to expand the telephony subband to 3600 kHz. The Commission, however, did not propose to change Section 97.221(b), which permits automatically controlled narrowband data operation at 3620-3635 kHz. Therefore, the unexpected and vast expansion of the 80-meter telephony subband completely, and without explanation, eliminates access to 3620-3635 kHz by automatically controlled digital stations, a privilege they enjoy now. This is because the amendment of Section 97.301(b) redefines the “80-meter band” for purposes of that rule section as 3500-3600 kHz. Section 97.305(c), which was unchanged by the R&O, limits RTTY and data emissions to the 80-meter band only. Therefore, because of the change in Section 97.301(b), RTTY and data are no longer authorized modes above 3600 kHz. Section 97.221(b) allows automatically controlled digital stations in, *inter alia*, the subband 3620-3635 kHz, and nowhere else in the 80-meter band. That rule section was not modified, or proposed to be modified by the R&O. That fact, and the fact that both the Notice and the R&O stated the Commission’s intent *not* to remove any privileges from incumbent licensees, is ample evidence that the Commission did not realize or intend that the very substantial expansion of the 80-meter telephony subband would have the consequence of removing the operating privilege of those who operate or plan to operate, or use, automatically controlled digital stations in the 80-meter segment, pursuant to Section 97.221(b). Based on this, which is more fully explained in the Petition for Partial Reconsideration, it is likely that the Petition for Partial Reconsideration will prevail on the merits.

5. There will be irreparable harm to a large number of operators and licensed users of the fixed, automatically controlled data stations at 3620 to 3635 kHz if the

requested Partial Stay is not granted. These stations are used and relied on by mobile and marine mobile Amateur stations, and they are used, and ready for use, in disasters and emergency communications. Absent the requested stay, they will have to cease operation, and they will not be available for use in emergencies because training exercises will not be permitted. Those who use and operate such stations were deprived of the opportunity to comment on the change adopted in the R&O because at no time prior to the R&O did they have any notice that the Commission intended to disenfranchise them. In fact, the Notice in this proceeding stated, at Paragraph 11, that the Commission proposed to adopt the ARRL refarming proposal in its entirety and sought comment on it specifically because “*no licensees would lose any spectrum privileges* and that General, Advanced and Amateur Extra Class licensees would gain spectrum for phone emissions, one of the most popular operating modes on the HF bands.” (emphasis added). The Notice, therefore, proposed that the 80-meter telephony subband include 3,725-4,000 kHz. So, the licensees whose interests will be irrevocably harmed on the effective date of the R&O at no point were given notice that their specific operating interests would be adversely affected. Instead, they were assured that they would not lose any spectrum privileges.

6. There will, by contrast, be no harm to any party from the grant of the partial stay requested herein pending reconsideration. The present rules have long permitted telephony and image operation in the 80-meter band only at 3750-4000 kHz. The partial stay requested herein would still permit, pending reconsideration, telephony and image operation between 3635 and 4000 kHz, and thus would implement, as of December 15, 2006, that portion of the R&O which makes available an additional 115 kHz of spectrum at 80 meters for telephony and image operation, which is not available for such operation

now. No one, under these circumstances, can reasonably claim that their interests would be adversely affected by the partial stay as requested herein.

7. Finally, the public interest favors grant of the partial stay. The Petition for Partial Reconsideration proposes a simple and equitable fix for the unintended consequences created by the telephony subband expansion at 80 meters. The relief requested is minimal, and it is consistent with the Commission's intent in this proceeding to expand the telephony/image segment at 80 meters to the largest extent possible, while protecting the existing operating privileges currently afforded Amateur Radio licensees. This Partial Stay request would temporarily, and the Petition for Partial Reconsideration would permanently, restore the RTTY/data segment only to the slight extent necessary to restore access to the automatically controlled narrowband digital subband of 3620-3635 kHz. This would reduce the Extra Class voice/image subband by 35 kHz from that specified in the R&O. Even so, however, the net expansion of the telephony subband from the present configuration would be 115 kHz, which is very substantial indeed. This is an urgent matter which, unless corrected, adversely affects a substantial number of existing Amateur Radio fixed facilities and an even more substantial number of mobile facilities, and threatens active emergency and disaster relief planning.

8. It bears reiteration that ARRL is not requesting herein that the Commission stay either the entirety of the R&O, which in general it supports, and which is most beneficial overall to the Amateur Service. Nor does ARRL request that the entirety of the telephony/image subband expansion accomplished by the R&O be stayed pending reconsideration. Rather, ARRL requests only a limited, partial stay of the telephony/image subband expansion, constituting the minimum relief necessary to

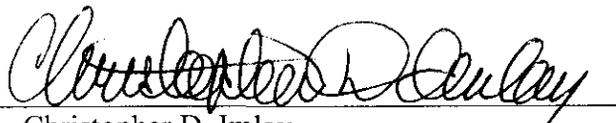
preserve the *status quo ante* pending reconsideration. That relief is the preservation of the RTTY and data emission privileges between 3600 and 3635 kHz, and the continued prohibition of telephony and image emissions below 3635 kHz.

Therefore, the foregoing considered, ARRL, the National Association for Amateur Radio, respectfully requests that the Commission grant this Petition for Partial Stay, pending final action on the Petition for Partial Reconsideration contemporaneously filed herewith, and grant, prior to December 15, 2006, a very limited stay of the portion of the new rules in the R&O so as to permit the use of RTTY and data, and not telephony and image emissions, between 3600 and 3635 kHz.

Respectfully submitted,

**ARRL, the National Association For Amateur Radio**

225 Main Street  
Newington, CT 06111-1494

By:   
Christopher D. Imlay  
Its General Counsel

Booth, Freret, Imlay & Tepper, P.C.  
14356 Cape May Road  
Silver Spring, MD 20904-6011  
(301) 384-5525

December 11, 2006