CQ Communications, Inc.
25 Newbridge Road, Hicksville, NY 11801 USA
(516) 681-2922 • FAX (516) 681-2926
www.cq-amateur-radio.com

Received & Inspected
JAN 5 2010
FCC Mail Room

December 22, 2009

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th St., SW
Washington, DC 20554

Dear Ms. Dortch:

Attached please find a Petition for Rulemaking relating to Part 97 of the FCC Rules. An original and nine (9) copies are enclosed.

Thank you and all the best for the holiday season.

Sincerely,

Richard Moseson
Editorial Director
CQ Communications, Inc.

No. of Copies rec'd 0+9
List ABCDE
Media-Audio 10-100

Received & Inspected
JAN 5 2010
FCC Mail Room

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of	)	
	)	
Amendments to Part 97 of the FCC Rules	)	RM-
Relating to Prohibited Uses of the	)	
Amateur Radio Service	)	

PETITON FOR RULE MAKING

To the Secretary:

I. Introduction

1. The following is a Petition for Rule Making to clarify the nature of certain prohibited and permitted communications by licensees of the Amateur Radio Service. Petitioner proposes to add language to the FCC Rules specifying that the general prohibition on transmitting communications on behalf of an employer [§97.113(a)(3)] does not apply when such communications are incidental to an employee's regular job responsibilities and that such communications serve primarily to benefit other amateur radio operators or members of the general public, rather than the licensee's employer.

2. In addition, Petitioner seeks a "housekeeping" change in the terminology of §97.113 (f) relating to retransmission of communications between a space shuttle and its associated ground stations.

II. Background

3. Petitioner, CQ Communications, Inc., is a New York-based publisher of magazines, books, videos and other products for the amateur radio and hobby radio markets. Our magazines include *CQ Amateur Radio (CQ), CQ VHF, Popular Communications* and *WorldRadio Online.* Our publications constitute the leading independent voice for amateur radio in the United States, particularly *CQ* magazine, which has been in continuous publication for the past 65 years.

4. Petitioner recognizes and respects the nature of the Amateur Radio Service "as a voluntary noncommercial communication service, particularly with respect to providing emergency communications,"[1] and is fully cognizant of the need to maintain the noncommercial nature of the service as well as the need for it not to become a low-cost

[1] FCC Rules, §97.1 (a)

MB Audio 10-100

substitute for other licensed services, particularly those in the Part 90 Land Mobile Service.

5. With respect to providing emergency communications, however, it is essential that Amateur Service licensees be permitted to train and practice in conjunction with served agencies, such as public safety entities and/or health care providers. On occasion, it is to the benefit of Amateur Service licensees if fellow amateurs who are also employees of such agencies may also participate in training and practice sessions. Such participation may also be to the benefit of the general public by providing realistic training to enhance the skills of amateurs when a real emergency arises.

6. §97.113 (a) (3) of the Commission's rules currently prohibits communications "in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer." Petitioner generally supports both the intent and application of this rule. However, when the application of this rule begins to conflict with the basis and purpose of the service it is supposed to protect, then it is appropriate to examine whether additional clarification of the rule is required.

III. Discussion

7. In recent months, communications between the Commission and various Amateur Service licensees suggest a new and stricter interpretation of this rule than in the past, specifically stating that the rule prohibits an employee of any entity from conducting communications on behalf of that entity, regardless of whether the person is on paid or unpaid time, or whether the person's normal job responsibilities include conducting two-way radio communications.

8. Commission staff members deny that there has been any change in interpretation. However, it is the general feeling among the amateur community and among many served agencies that this is indeed a new and much stricter interpretation. Regardless of who is correct here, the perception of a change in interpretation has prompted certain actions. Many emergency service agencies have begun restricting the ability of their employees who are also licensed amateurs to participate in amateur radio emergency communications, and some agencies have opted to terminate their relationships with amateur radio emergency communications organizations rather than risk violation of this rule. This compromises the ability of amateur radio to provide emergency communications in accordance with §97.1 (a) of the Commission's rules.

9. While the Commission has expressed a willingness to grant waivers to this prohibition for disaster drills on a case-by-case basis,[2] we believe that long-term use of the waiver process will impose unreasonable administrative burdens on the Commission (even those requests that are ultimately denied will require time and resources to examine and respond to them), and that entities will often decline to use amateur radio resources rather

[2] DA-09-2259, Public Notice, *Amateur Service Communications During Government Disaster Drills,* issued Oct. 20, 2009

than committing their own resources to applying for a waiver. In addition, a policy that requires numerous waivers needs to be re-examined to determine whether it can be revised to meet the needs of the petitioners without undermining the basic goals of the policy. We propose one possible revision herewith.

10. Petitioner is aware of an additional, previously filed, petition in this matter submitted by Messrs. West, Blackwell and Coursey (the Amateur Radio Policy Committee). While we support this petition and share its goals, we believe that the problem posed by the current interpretation of §97.113 (a) (3) is not limited to training exercises for emergency and disaster communications, as addressed by that petition, and that a broader solution is required. The prohibition in §97.113 (a) (3) applies to all amateur communications and we are concerned that applying it beyond the narrow confines of disaster preparedness may result in requirements to terminate long-standing activities that are widely considered to be beneficial to the amateur radio community and/or the general public.

11. For example, it is a decades-old practice of amateur radio publications to evaluate and review new equipment in the marketplace. Amateurs often look to these reviews for objective evaluations by respected writers, who often are staff members of the magazines in which the reviews are published. A strict application of §97.113 (a) (3) as currently interpreted could make it illegal for magazine staff members to evaluate equipment in a real-life setting because transmitting with such equipment would be done "on behalf of an employer," even though the primary job responsibilities of the employees would not involve the on-air use of amateur transmitting equipment.

12. Many employees of amateur radio manufacturers, dealers, publishers, etc., are well-known in the amateur community and are *de facto* representatives of their respective employers whenever they get on the air. Would the current interpretation of §97.113 (a) (3) make it illegal for these individuals to transmit at all, because another amateur may recognize their connection with their employer, and possibly ask a question or make a comment related to their employment?

13. For nearly a decade, the Amateur Radio on the International Space Station (ARISS) program has given thousands of students in more than 500 schools around the world the opportunity to speak directly with an astronaut in orbit, via amateur radio. NASA considers it part of its Educational Outreach Program. This program has been beneficial for the space program, for amateur radio and more importantly, for encouraging young people to pursue career interests in science and technology. The space station crew members, many of whom are NASA employees, conduct these contacts during their personal time, and there has never been a question regarding a possible conflict between their professional activities and their use of amateur radio. Yet, we are now informed that that §97.113 (a) (3) makes no distinction between communications made during "on duty" time and personal time, and that *any* communication on behalf of an employer is prohibited, even during personal time. Applying the current interpretation of this rule to the ARISS program would mean that NASA astronauts could no longer participate. To require the cancellation of such a successful and beneficial program - or limit its use to "space tourists" and crew members from other countries - simply because of a strict

interpretation of a long-standing rule would be absurd, particularly since there has never been any suggestion of a conflict with this rule in the past. The application of the current interpretation of §97.113 (a) (3) in this context would conflict with two more of the Amateur Radio Service's basic pillars, "(e)xpansion of the existing reservoir within the amateur radio service of trained operators, technicians, and electronics experts,"[3] and "(c)ontinuation and extension of the amateur's unique ability to enhance international goodwill."[4] Once again, when the application of a rule begins to conflict with the basis and purpose of the service it is supposed to protect, it is appropriate to examine whether additional clarification of the rule is required.

14. Finally, there are many business entities - particularly those in technology fields that employ several radio amateurs - which have employee amateur radio clubs and stations on company premises, for the recreational use of licensed employees. Should the employees identify the name of the club or the location of the station, such transmissions may be construed as being made "on behalf of an employer" and may therefore be illegal under the current interpretation of this rule. A prime example of this type of club station would be W1HQ, the ARRL employees' amateur radio club station located within the headquarters building of the American Radio Relay League.

15. There is ample precedent within the rules for certain exceptions to the prohibition on communications on behalf of an employer, specifically subsections 97.113 (c) and (d). These subsections not only permit communications on behalf of an employer, but permit a control operator to be compensated for these communications. Petitioner does not propose expanding these exceptions at this time, except within the general context of its proposed changes.

16. Petitioner does not believe it was the intention of this rule to limit participation in amateur radio emergency communications exercises by amateurs who happen also to be emergency service professionals, or to otherwise restrict longstanding activities generally considered beneficial to the amateur radio community, such as equipment reviews and contacts between astronauts and students. Rather, we believe the intent of this rule was to maintain amateur radio's noncommercial status and to prevent it from being abused by those who would use it as a low-cost alternative to other, more appropriate, radio services. Therefore, petitioner hereby proposes the amendments that follow in order to clarify the proper intention of this rule.

17. In addition, while carefully reading the language of §97.113, it was observed that the current subsection (e) refers several times to retransmission of communications between a space shuttle and its associated ground stations. Mindful of the fact that the shuttle era is scheduled to end in the near future, that a successor ship to the shuttle has not yet been selected, and that there are ongoing discussions of resuming manned flights to the Moon (and perhaps to Mars), we felt it would be appropriate at this time to update the terminology in order to be able to accommodate approved retransmissions from manned space flights regardless of the terminology in use in the future. Since each instance would

---

[3] §97.1(d)
[4] §97.1(e)

still require advance approval from NASA, as in the current rule, this would be nothing more than a "housekeeping" change, replacing the term "space shuttle" with the term "manned space vehicle."

Proposed Rule Changes

18. Therefore, for the reasons cited above, petitioner proposes the following changes to §97.113 (Proposed additions in *italics;* proposed deletions are shown with a ~~strikethrough~~):

1. Amend subsection (a), paragraph (3), as follows:

§97.113 Prohibited transmissions.

(a) No amateur station shall transmit:

(3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer, *except as otherwise provided in these rules*. Amateur operators may, however, notify other amateur operators of the availability for sale or trade of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis;

2. Add a new subsection(e), as follows:

(e) Communications on behalf of an employer may be transmitted on an occasional basis, provided that:

(1) Such communications are incidental to the employee's normal job responsibilities and are conducted voluntarily;

(2) Such communications are conducted during an employee's personal time, including but not limited to lunch hours, days off and other non-compensated time periods, and

(3) The primary beneficiaries of such communications are other amateurs and/or members of the general public, and not the employer.

(4) Nothing in these rules shall be construed to limit the recreational use of an amateur station on an employer's premises by a duly licensed employee, as authorized by the station licensee.

3. Redesignate existing subsection (e) as (f) make the following changes:

(f) No station shall retransmit programs or signals emanating from any type of radio station other than an amateur station, except propagation and weather forecast information intended for use by the general public and originated from United States Government stations and communications, including incidental music, originating on United States Government frequencies between a *manned* space *vehicle* ~~shuttle~~ and its associated Earth stations. Prior approval for *manned* space *vehicle* ~~shuttle~~ retransmissions must be obtained from the National Aeronautics and Space Administration. Such retransmissions must be for the exclusive use of amateur operators. Propagation, weather forecasts, and *manned* space *vehicle* ~~shuttle~~ retransmissions may not be conducted on a regular basis, but only occasionally, as an incident of normal amateur radio communications.

4. Redesignate existing subsection (f) as (g).

Respectfully submitted,

CQ Communications, Inc., by

Richard Moseson
Editorial Director

CQ Communications, Inc.
25 Newbridge Rd.
Hicksville, NY 11801

December 22, 2009