

**Before the  
Federal Communications  
Commission**

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In the matter of a American Hospital	)	
Association, Request for Blanket	)	<b>WP Docket No. 10-54</b>
Waiver of Section 97.113(a)	)	

By: Mark C. Floyd (N3JHA)  
105 Oakville Road  
Beaver Falls, PA 15010-1207

To: The Chief of the Wireless  
Telecommunications Bureau

**Comments**

Introduction and statements of facts

On October 20, 2009 The Federal Communications Commission (FCC) promulgated Public Notice DS 09-2259 “Amateur Service Communications During Government Disaster Drills” outlining the FCC’s position concerning transmissions by amateur stations participating in government disaster drills and the need to comply with all applicable amateur service rules. This Public Notice also clarified the fact that the amateur service was not an emergency radio service. It further recognized that State and local governmental agencies occasionally conducted emergency preparedness or disaster drills that included amateur operations. The FCC specially recognized that some non governmental entities such as hospitals have expressed interest in having employees who are amateur station operators participate in these drills. The FCC further went on to outline an acceptable means by which a waiver of the conditions of 47 CFR § 97.1(a) as well as 47 CFR §97.3(a)(4) could be obtained. Within the requirements listed was the expectation the governmental agency sponsoring the drills were to submit the waiver requests.

On February 17, 2010, Ms. Welsh on behalf of the of the American Hospital Association (AHA) sent a letter to the FCC requesting a blanket waiver of Section 97.113(a). Ms. Stone in her letter stated that *Further contrary to the interpretation set forth in Public*

*Notice, AHA does not believe that Section 97.113(a) prohibits the use of Amateur Radio stations in emergency preparedness drills conducted by hospitals in any event.....*

Ms. Stone's letter goes on to request a blanket waiver with no conditions stated for the terms of this waiver other than the waiver be in force *until the Commission adopts a final order in response to the forthcoming Notice of Proposed Rulemaking that will seek comment on potential changes to this section.*

### Discussion

The FCC within Public Notice DA 09-2259 clearly stated that participation by amateur stations participating in government disaster drill on behalf of their employers were in fact in violation of the requirements of 47 CFR § 97.113(a)(3) but balanced the public interest in facilitating government-sponsored emergency preparedness and disaster drills against the requirements of the Commission's rules and provided a mechanism (a waiver) for these specific purposes. This ruling was neither capricious or arbitrary in nature as it balanced the public interest against the requirements of the rules and provided a workable solution to allow amateur stations to operate while provided some control of those participating in drills and allowed the FCC to grant waivers on a case by case basis to ensure the privilege was not abused.

Now comes the AHA who does not realize that the FCC has already ruled within DA 09-2259 on the issue of operation during government sponsored emergency preparedness and disaster drills on behalf of an employer violates requirements of 47 CFR § 97.113(a)(3) yet then goes on to request a waiver of 47 CFR § 97.113(a) for amateur station operation by hospital employees for Joint Commission emergency preparedness drills for the purpose of accreditation. Accreditation drills are not government sponsored while they may employ government agencies as a part of their drills. The AHA then provides no rational basis for this waiver request other than one that in the end amounts to cost.

By what stretch of the imagination could the requirements of 97.113(a) apply to amateur station operators transmitting for their employers as part of government sponsored emergency preparedness and disaster drills but not apply to hospital accreditation emergency preparedness and disaster drills ? The writer is left to wonder.

As written, **I strongly oppose the request for any blanket waiver** for the purposes outlined in the AHA's letter.

- 1) The potential for abuse in this matter is great. Not only abuse of the Commission's rules but the very purpose of the amateur radio service could be violated if this waiver is granted. The abuse could be rooted in hospitals making the holding of an amateur radio license a "condition of employment" in the future since it is only natural that once created, hospital communicator positions must be filled. I am not contending that hospitals would hire amateur radio "professional" communicators but rather it might favor a job applicant in seeking employment if they could wear more than one hat and fill these communicator positions as

collateral duties in addition to their medical profession jobs. An analogous situation exists at many nuclear power plants where participation in Emergency Response Organizations is clearly stated as a condition of employment by the way of employment advertisement conditions and required qualifications.

- 2) The amateur radio licensee could be placed in an untenable position of being “asked” to volunteer to fulfill the duties of a communicator when in fact they are being forced to accept the position in order to curry favor with their employer. This position could then evolve to be a permanent assignment as opposed to what began as a volunteer one. The ability of the amateur operator to resign from the position could likewise put them in a difficult position with their employer as they could be seen as not being a “team member”.
- 3) Existing hospital employees may be “asked” to qualify for an amateur radio operator’s license though they have no interest in the amateur radio service other than to make their employer happy.
- 4) Public Notice DA 09-2259 allowed a reasonable accommodation for government sponsored emergency preparedness or disaster drills and provided a mechanism for the granting of waivers by the FCC. It was never written to cover the situation now being requested (non-governmental drills and a blanket waiver). As such the request should be rejected out of hand as premature and the AHA should then request to be included in the existing waiver process outlined in Public Notice DA 09-2259 before asking for a blanket waiver which only applies to their interests, not to all those current participants in government sponsored emergency preparedness and disaster drills who have been requesting waivers in accordance with the published rule. The AHA should also request that the waiver process be modified to allow for a blanket waiver and then allow all like minded organizations affected by these rules the same advantage and benefit of obtaining a blanket waiver equally as opposed to requesting a special dispensation that applies to their interests alone.

If the FCC is not persuaded to deny the AHA request, any waiver granted should be approved with extensive conditions to protect amateur radio licensee’s interests as well as the amateur radio service as a whole. Some reasonable conditions might include:

- 1) A waiver granted with a specific timeframe. I would think a 2 year term might be reasonable, balancing the FCC’s and public’s interest in controls over the privilege being granted. This would ensure the ability of the FCC to provide oversight and be informed of what operators are participating and for what purpose. It would still allow a reduction in cost to the AHA’s members by reducing member’s administrative burden. A side benefit is the FCC would also benefit in reduced administrative costs as well. If the FCC is assured by actions as opposed to words that the privilege of a waiver is not being abused, the timeframe could be extended accordingly.

- 2) The potential waiver should be granted with the understanding that it is entirely voluntary for an employee to participate under the provisions and privileges of their amateur radio license and that under no circumstances can this participation be made a "condition of employment". That employees must sign a document, a copy being supplied to the FCC attesting that their participation is strictly voluntary and freely given under no threat of punishment or retaliatory action and the employer must countersign making the same statements of fact with respect to their employer's participation. I am sure there is existing Federal Law that could be found to apply to making false statement to FCC officials so the signed documents could be provided as statements of fact under penalty of law.
- 3) If a waiver is to be granted, then the same blanket waiver option must be available equally to all organizations/businesses participating in emergency preparedness and disaster drills under like conditions of a requirement imposed for license or accreditation purposes.
- 4) That any waiver must be granted with the clear requirement that amateur radio service may only be used as the communication service of last resort thus requiring the grantees to purchase and maintain primary emergency radio communications equipment most likely Part 90 equipment.
- 5) That any waiver must be granted with the clear requirement that any operation of amateur radio service equipment operated for the purpose of support of drills must maintain a logbook detailing the communications conducted including time and stations contacted. That this logbook must be maintained and available for inspection by the FCC.

My preference would be that no blanket waivers be granted for all the reasons noted above, but given the fact this issue is even being brought forth for public comment indicates to me that at the least the FCC is considering granting this request regardless the information provided in the comments. I pray however that the FCC will strive to maintain some modicum of control to prevent abusing the privileges it may grant.