Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 97 of the Commision's Rules		**) WP Docket No. 10-72**
Regarding the Amateur Radio Service	)	
Communications During Government Disaster Drills	)	

COMMENTS

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Amateur Extra, K7JEM

To the Commission:

I am in support of the proposed amendments, but I question whether or not they are actually needed.

For many years, amateur operators have assisted in drills and emergency preparation. At times, these operators were also employees of the hospital, government agency, or private institution participating in the drill. This never seemed to be a problem in the past, based on previous FCC comments and actions.

Since 1993, the FCC has allowed amateur operators to handle communications which are on behalf of an employer, as long as that communication had no pecuniary benefit for that employer or operator. This rule seemed to be common sense. The rule had never been interpreted to mean "*any* communications on behalf of an employer", just those that had a monetary benefit. Today, certain employees of the FCC are claiming that 97.113(a)(3) prohibits any sort of employer related communications.

The current FCC website gives direction as to how to determine if a specific communications is legal, and authorized. It consists of a four part test. This is a direct copy of what is shown on that website: http://wireless.fcc.gov/services/index.htm?job=about_1&id=amateur
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Q: What are the standards that I should use when deciding whether or not my station should transmit a certain type of communications?

Section 97.113 provides four general standards for you to observe. In summary, any amateur-operator-to-amateur-operator communication is permitted, unless it is:

1. Specifically prohibited, or

2. Transmitted for compensation, or
3. Done for the pecuniary benefit of the station control operator, or
4. **Done for the pecuniary benefit of the station control operator's employer.**

This wording is taken directly from previous FCC orders from 1993 and 1998. The current website indicates that this language has been in place since at least 2002, or for over 8 years.

This "new" interpretation by the FCC, that of prohibiting "any" communications on behalf of an employer, is something that has only come up in the last year or so. At best, the FCC is sending mixed messages as to what is considered acceptable practice. If one determines that "any" communications done on behalf of an employer should be prohibited, then this could affect other entities as well; groups like the ARRL, astronauts, school teachers, and normal citizens that may need to occasionally transmit communications that fall into this category. The ARRL (and other amateur organizations) and teachers have no exemption from 97.113(a)(3). It is clear from the rules that their only exemption is to 97.113(a)(2), which is the prohibition against compensation. This is readily seen in that rule, where the word "compensation" is used. It does not refer to any sort of "pecuniary interest", which is the crux of 97.113(a)(3).

97.113 Prohibited transmissions.
(a) No amateur station shall transmit:
(1) Communications specifically prohibited
elsewhere in this part;
(2) Communications for hire or for
material **compensation**, direct or indirect,
paid or promised, **except as otherwise**
provided in these rules;
....
(c) A control operator may accept
compensation as an incident of a teaching
position during periods of time
when an amateur station is used by
that teacher as a part of classroom instruction
at an educational institution.
(d) The control operator of a club station
may accept **compensation** for the
periods of time when the station is
transmitting telegraphy practice or information
bulletins,.....

All this exemption does is allow them to be compensated. It does not allow teachers or compensated club operators to any exemption from 97.113(a)(3). In the past, this was never a problem, since although communications were clearly "on behalf of an employer", there is no employer pecuniary benefit involved in bulletins, code practice, or a teacher talking to another operator while being paid. In Part 97, it is clear that 97.113(a)(3) has NO exceptions, since when an exception is noted in the rules, the section having that exception always has the words "except as otherwise provided in these

rules." (see above) The prohibition in 97.113(a)(3) does not carry this caveat, and in fact the word "employer" is only used one time in all of part 97.

Drills, tests, and exercises create no "pecuniary benefit" to either the employer or the operator. In most cases, these employers have a monetary loss due to the drill. Therefore, under the "old" (historic) interpretation of 97.113(a)(3), this was never an issue, and was permitted, since 1993.

My suggestion would be simply to modify 97.113(a)(3) to clarify the original intent by adding a few words. "Communications in which the station licensee or control operator has a pecuniary interest, including communications **having a pecuniary benefit for or** on behalf of an employer."

This would also clarify the position that teachers, astronauts and qualified clubs are also compliant, since their communications have no pecuniary benefit to their employers.

Respectfully submitted,

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