

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

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

To: The Commission
Via: Office of the Secretary

**COMMENTS OF ARRL,
THE NATIONAL ASSOCIATION FOR AMATEUR RADIO**

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL), by counsel and pursuant to the *Notice of Proposed Rule Making*, FCC 10-45, 75 Fed. Reg. 20951 *et seq.*, released March 24, 2010 (the Notice), hereby respectfully submits its comments on the Commission's proposal to amend Section 97.113(a) (3) of the Commission's Rules [47 C.F.R. § 97.113(a) (3)] to permit Amateur Radio operators who are employees of entities participating in Government-sponsored emergency preparedness and disaster readiness drills and tests to transmit communications during those drills and tests on behalf of the operators' employer. In the interests of the Amateur Radio Service in the protection of its essential, non-commercial character, while encouraging the facilitation of *bona fide* emergency preparedness and disaster relief drills and exercises, ARRL states as follows:

I. Introduction

1. ARRL supports the Commission's effort in the Notice to facilitate Amateur Radio operations during government-sponsored emergency preparedness and disaster readiness drills and tests. ARRL suggests, however, that the drills and exercises in which

Amateur Radio licensee-employees may transmit communications on behalf of their employers need not and should not be limited to Government-sponsored emergency communications drills and exercises. Instead, all *bona fide* emergency communications drills and exercises involving Amateur Radio should be subject to the same regulatory requirements. Most urgently, ARRL requests that the Commission be especially careful in crafting what should be an exceptionally narrow and limited exception to the general rule prohibiting communications on behalf of one's employer. The Commission should carefully delineate enforceable limits on the types of Amateur communications that can be provided by licensee-employees on behalf of their employers. Section 97.113 of the Commission's rules already contains a great deal of flexibility in terms of the communications permitted.¹ The revised rule should be sufficiently specific to preclude any possible misunderstanding by Amateur Radio licensees (or on the part of their employers) about what communications are permitted and what are not.²

2. To address this, ARRL proposes³ a slight revision to the proposed Appendix set forth in the Notice. ARRL's proposed Appendix includes some *very specific language* for the revised Section 97.113(a) (3). This language will, at once: (1) accommodate the specific needs of Amateur Radio licensees who are employees of entities who actively participate in organized, *bona fide* emergency communications and disaster readiness

¹ There is nothing within Section 97.113(a) of the Commission's Rules that prohibits *per se* the use of Amateur Radio as part of emergency communications drills, as long as the Amateur Radio communications are not transmitted for hire or material compensation, and as long as Amateur Radio is not used on a regular basis where those communications could be reasonably furnished by other radio services. It is only communications on behalf of employers *by employees* (as opposed to communications furnished to those same entities by non-employee volunteers) that are prohibited by Section 97.113(a) (3) of the Rules.

² It is critical that employees be well-aware that they cannot use Amateur Radio stations to transmit business information at any time for their employers. It must also be apparent to employers from the rule itself that the employer cannot utilize its employees who are Amateur Radio operators for communications not directly related to disaster relief and emergency preparedness drills and exercises (such as business restoration communications) on behalf of that employer.

³ See the proposed Appendix attached to these Comments.

drills and tests; (2) permit effective and seamless emergency and disaster relief communications preparedness drills and exercises incorporating Amateur Radio; (3) protect the Amateur Service to some extent against potential commercial exploitation by business entities in lieu of other, more appropriate radio services; and (4) protect Amateur Radio licensees who are employees against pressure from their employers to conduct inappropriate communications utilizing their Amateur Radio licenses.

II. Background

3. The Commission's statement of the bases and purposes of the Amateur Service in Part 97 of the Commission's Rules includes as the first fundamental principle the following:

- (a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.

This incorporates two principles which seldom, but occasionally, require clarification.

The Amateur Service, by international treaty⁴ and Federal law⁵ is an entirely non-commercial radio service in which communications cannot be furnished for any type of consideration, or to further a licensee's pecuniary interests. Those same treaties and Federal laws, however, both permit and strongly encourage the provision by radio Amateurs of emergency and disaster relief communications.⁶ The Commission

⁴ RR 1.56 defines the amateur service as "A *radiocommunication service* for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, by duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest."

⁵ 47 U.S.C. § 153(2) defines an amateur station as "a radio station by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest."

⁶ See, e.g. Resolution 644 (WRC-07), Geneva, 2007 *Radiocommunication resources for early warning, disaster mitigation and relief operations*. RR 25.9A (as modified at WRC-03) states that "Administrations are encouraged to take the necessary steps to allow amateur stations to prepare for and meet communications needs in support of disaster relief." Congress has repeatedly spoken of the important benefits of Amateur Radio emergency communications efforts. See, the Conference Report to the Communications Amendments Act of 1982, Pub. Law #97-259 (1982); the "Federal Communications Authorization Act of

recognizes in the Notice that the Amateur Service “plays a unique and critical role when ...primary facilities are damaged, overloaded, or destroyed.”⁷

4. Prior to 1993, in order to protect the essential, non-commercial character of the Amateur Service, the Commission’s Rules prohibited the use of Amateur Radio communications in which *anyone* had a pecuniary interest.⁸ Since this led to confusion among licensees about what was permitted and what was not, and unreasonably restricted Amateur Radio licensees in their good-faith efforts to provide public service communications, ARRL petitioned the Commission in 1992 to relax the rules governing “business communications.” In 1993, in Docket 92-136, in response to ARRL’s request, the Commission relaxed the restrictions substantially, adopting the current language of Section 97.113.⁹ The reason for the change was “to give amateur operators greater flexibility to provide communications for public service projects as well as to enhance the value of the amateur service in satisfying personal communication needs.”¹⁰ The change greatly facilitated *volunteer* Amateur Radio communications. However, there was no change at that time (or since) to the portion of the rule that prohibited communications in which the operator has a pecuniary interest, including *communications on behalf of an employer*. The italicized clause enunciated a specific instance in which a licensee is *always* deemed to have a pecuniary interest. In general, therefore, communications on behalf of an employer are, and should be prohibited *per se*. With very limited and very

1988,” Public Law 100-594; and Public Law 103-408, a “Joint Resolution to recognize the achievements of radio amateurs, and to establish support for such amateurs as national policy.”

⁷ See, Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, EB Docket No. 06-119; WC Docket No. 06-63, 22 FCC Rcd. 10541, 10576, ¶ 111 (2007) as cited in the Notice, at footnote 5 thereof.

⁸ The prior rule prohibited Amateur stations from transmitting “any communications the purpose of which is to facilitate the business and commercial affairs of any party.”

⁹ See, *Amendment of Part 97 of the Commission’s Rules to Relax Restrictions on the Scope of Permissible Communications in the Amateur Service, Report and Order*, 8 FCC Rcd. 5072 (1993).

¹⁰ *Id.*, 8 FCC Rcd. at 5073.

specific exceptions,¹¹ such communications are now, and always have been expressly prohibited by Section 97.113 of the Commission's Rules.

5. Section 97.113 (a)(3) presently prohibits an employee who is an Amateur Radio licensee from providing Amateur Radio communications on behalf of his or her employer. The rule now reads *in relevant part* as follows:

§97.113 Prohibited transmissions

(a) No amateur station shall transmit:

(2) Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules;

(3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer. Amateur operators may, however...

(5) Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.

The prohibition of “communications on behalf of [a licensee’s] employer” has sound policy bases. It protects the Amateur Service to some extent against commercial exploitation, and it protects employees from being subject to unreasonable pressure from an employer to use their Amateur Service licenses for purposes for which the Service was not intended.¹² No employee who is a radio Amateur should have to choose between

¹¹ The rules now permit control operators who are teachers to transmit communications via Amateur Radio as part of classroom instruction at an educational institution [47 C.F.R. § 97.113(c)]. The rules also permit control operators of a club station to accept compensation for transmitting telegraphy practice or informational bulletins under certain limited conditions [47 C.F.R. § 97.113(d)].

¹² Amateur Radio operators are normally inclined to provide communications upon request for public service activities, in a spirit of volunteerism. There is, however, a substantial difference between a volunteer Amateur Radio licensee who offers to provide communications for a public service event sponsored by an entity with which the volunteer has no business relationship, and a request by an employer to an employee who is an Amateur licensee to assist the employer by providing Amateur Radio communications for an event sponsored by the employer. The difficulty of the Amateur licensee/employee in the latter case is in avoiding exploitation of the Amateur Radio Service (and the licensee/employee) while at the same time avoiding disappointing the employer, which might adversely affect the licensee/employee’s career.

serving the business needs and interests of the licensee's employer, and protecting the non-commercial character of the Amateur Service.

6. However, in some cases, Amateurs who are employees of entities (such as hospitals, municipal government public safety entities, emergency operations and emergency medical facilities) that typically and regularly engage in emergency communications planning, emergency communications exercises and drills, and training for such cannot now participate on behalf of their employer. Instead, the employer entities must utilize non-employee volunteers for the same purpose, or they must request a waiver of the Commission's Rule. The existing rule, as the Commission notes at paragraph 1 of the Notice, clearly prohibits transmissions by employees on behalf of their employers, and while there are limited exceptions noted above, none of those exceptions would permit Amateur licensees who are employees of public safety agencies, emergency medical facilities, or hospitals, for example, to participate in drills and tests in preparation for emergencies and disaster relief communications and to transmit messages on behalf of their employers in the course of those emergency and disaster relief drills and tests.

7. The rules should continue in general to prohibit communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer (a typical example of which is the use of Amateur Radio to conduct business continuity or business restoration communications). However, the rules clearly permit precisely the same communications, if performed by a non-employee, *volunteer* Amateur Radio licensee, provided that such communications are not conducted on a regular basis. The rule seeks to ensure that the Amateur Service is not misused as an inexpensive alternative to Part 90 or Part 95 land mobile communications or other radio

services, and to ensure that employees who are Amateur Radio licensees are not subjected to undue pressure from employers to provide types of communications for which the Service was not intended. Those are important goals and the rule is reasonably related to achieving them. The rule should be retained in a form that is enforceable going forward.

8. In a *Report and Order*, FCC 06-149, 21 FCC Rcd.11643, released October 10, 2006, the Commission offered a clarification for employees of disaster relief agencies or emergency response organizations who are Amateur licensees, stating that “Section 97.113 does not prohibit amateur radio operators who are emergency personnel engaged in disaster relief from using the amateur service bands while on paid duty status. These individuals are not receiving compensation for transmitting amateur service communications; rather, they are receiving compensation for services related to their disaster relief duties and in their capacities as emergency personnel.” This, however, was *not* an exception to the prohibition of "communications on behalf of an employer" found at Section 97.113(a) (3). Paid emergency personnel who are licensed amateurs, and who need to employ Amateur Radio in *actual disaster relief operations* can rely on the Commission's statements that they may do so.¹³ This clarification applies only to “emergency personnel engaged in disaster relief.” It does not apply to training exercises or drills. It does not apply to employees of entities that may encounter business disruptions but which are not in the business (either for-profit or non-profit) of providing disaster relief. And it does not permit employees to provide Amateur Radio

¹³ The clarification flows directly from Section 97.403 of the Commission’s rules, which provides that “(n)o provision of these rules prevents the use by an amateur station of any means of radio communication at its disposal to provide essential communication needs in connection with the immediate safety of human life and immediate protection of property when normal communication systems are not available.”

communications on behalf of their employers other than during actual disaster relief efforts.

III. The Waiver Process

9. The Commission's recently created waiver process¹⁴ whereby Amateur licensees may request of the Wireless Bureau and be granted (on a case-by-case basis) a waiver to conduct communications on behalf of an employer in connection with a "government-sponsored drill or exercise," is an acknowledgement that emergency communications *preparedness* using Amateur Radio in some circumstances necessitates relief from the strict application of Section 97.113(a)(3). The Commission's responsiveness and attention to the needs and interests of the Amateur Service in creating this process is appreciated in the Amateur Radio community. The waiver process has been well-received and professionally administered since its inception. The Commission's staff has been accommodating and prompt in the administration of the waiver program. However, that process is administratively cumbersome for those seeking such waivers and for the Commission's staff as well. The process is not sufficiently flexible to accommodate the needs of some entities such as hospitals, state and local governments, and public safety agencies to adequately participate in periodic, *bona fide* Amateur Radio emergency communications drills and exercises. It is cumbersome because it requires a per-event waiver filing, and because the Commission's staff has to process and grant these one at a time and analyze the need for waivers on a case-by-case basis. Sometimes the fact-based applications require additional inquiry by the Wireless Bureau staff and clarification by the applicant, which is labor-intensive and time-consuming. Since the Commission is willing to readily grant these

¹⁴ See the *Public Notice, Amateur Service Communications During Government Disaster Drills*, DA 09-2259, released October 20, 2009.

waivers, a carefully crafted rule change is called for instead, thus to permit by rule what is now being routinely granted by individual waiver.

IV. The Notice Proposal

10. The instant Notice proposes to modify Section 97.113(a) of the Commission's Rules to provide that, under certain limited conditions, Amateur Radio operators may transmit messages during emergency and disaster preparedness drills, regardless of whether the operators are employees participating in the drill. The proposed exception for employee licensees would be to provide communications for employers during *Government sponsored* drills or exercises. However, the Notice asks for comment as to whether it should permit employee operation of Amateur stations during non-government-sponsored emergency communications drills and exercises as well. ARRL is of the view that entities that regularly participate through their employees, or which would be expected to have their employees participate, in *bona fide* emergency communications and disaster preparedness drills and exercises should, subject to carefully circumscribed and enforceable limits, be permitted to do so. Eligible emergency preparedness drills should not be limited to government-sponsored drills and exercises. Amateur Radio licensee-employees of organizations active in emergency communications and disaster relief planning should be able to participate in all *bona fide* emergency communications drills and exercises, whether or not those drills or exercises are sponsored by a government entity. ARRL's Amateur Radio Emergency Service® (ARES®) program, for example, sponsors at the State and local level periodic, well-organized emergency communications drills and exercises. There is no reason whatsoever to differentiate between ARES drills and exercises and those sponsored by,

for example, a Radio Amateur Civil Emergency Service (RACES) entity acting under the auspices of a State or local office of emergency services. Both organizations provide top-quality emergency and disaster relief communications, and there is no reason to regulate the two differently in this context. The American National Red Cross, with which ARRL has a Memorandum of Understanding, also sponsors emergency drills and exercises which regularly and extensively utilize Amateur Radio communications. Those entities which would utilize their employees in order to participate in a Red Cross emergency exercise should be permitted to do so to the same extent that they could participate in a government-sponsored drill or exercise.

**V. The Types of Communications Permitted Under the New Rule
Should be Carefully Delineated, and Subject to Conditions**

11. As noted above, there are very important policy justifications for a *per se* prohibition of communications made by Amateur licensees on behalf of the licensee's employer. The Commission's waiver process, recently created, is a reasonable "escape valve" for the unusual circumstances that arise in which organizations have a need for employees to fill the role that a volunteer Amateur Radio operator might not appropriately fill. However, if the rule is amended very specifically, and if the Amateur Radio transmissions to be made by an employee for the benefit of the employer are strictly limited to those "*necessary to participation in emergency preparedness and disaster drills that include Amateur operations for the purpose of emergency response, disaster relief or the testing and maintenance of equipment used for that purpose,*" the purposes of Section 97.113 would not be frustrated, and the public interest would be furthered by the rule change. Such a specific, limited exception would not compromise the non-pecuniary character of the Amateur Service, or permit an employer to pressure an

employee to exploit the Amateur Service for the commercial benefit of that employer. The key is to prohibit the conduct of operational, business or business restoration communications by Amateur Radio licensees who are employees of the organization involved in emergency preparedness, but to permit and facilitate the involvement of the organization as a key participant in *bona fide* Amateur Radio emergency and disaster relief communications drills and exercises. Advance planning by businesses and organizations for business restoration communications should normally be done with reference to Part 90 or Part 95 communications facilities. That is to be distinguished from disaster planning or emergency communications planning for the benefit of the public, which should always involve Amateur Radio as at least one component.

12. The current Section 97.113 in general does what the Commission intended in 1993: “to give amateur operators greater flexibility to provide communications for public service projects as well as to enhance the value of the amateur service in satisfying personal communication needs.” ARRL suggests therefore that the Commission should indeed modify the rule, but only subject to the following specific provisions: (1) the emergency preparedness and disaster readiness drills and tests during which an employee who is an Amateur Radio licensee may provide communications on behalf of the licensee’s employer should not be limited to Government-sponsored drills and tests; and (2) the transmissions made by Amateur Radio licensees pursuant to the exception should be at all times limited to those *necessary to participation in emergency preparedness and disaster drills that include Amateur operations for the purpose of emergency response, disaster relief or the testing and maintenance of equipment used for that purpose*, and for no other purpose.

13. The Amateur Radio Service is ready, willing and able to provide public service, emergency and disaster communications, and it is well understood that a necessary component of that ability and readiness is the experience that comes from preparedness exercises and drills. The ultimate beneficiary of Amateur Radio communications is the public. The Service should not, however, be exploited as an inexpensive, flexible alternative to the Land Mobile Radio Service, the General Mobile Radio Service, or Commercial Mobile Radio Service facilities. ARRL considers the language set forth hereinabove to be both necessary and sufficient, and sufficiently inclusive, as to address the Commission's goals, and the needs and interests of Amateur Radio licensees. Subject to the two very specific provisions set forth above, and only with those provisions, ARRL supports modification of Section 97.113 of the Commission's rules as set forth in the revised Appendix.

Therefore, the foregoing considered, ARRL, the National Association for Amateur Radio, respectfully requests that the Commission proceed with the rule change

proposed in this proceeding only in accordance with the specific recommendations herein
and in the attached proposed revised Appendix.

Respectfully submitted,

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May 24, 2010

APPENDIX

Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

The authority citation for part 97 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

1. Section 97.113 is amended by revising paragraph (a)(3), adding new paragraphs (a)(3)(i) and (a)(3)(ii), redesignating paragraphs (c) and (d) as new paragraphs (a)(3)(iii) and (a)(3)(iv) respectively, and redesignating paragraphs (e) and (f) as (c) and (d) respectively, to read as follows:

§ 97.113 Prohibited transmissions.

(a) ***

(3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer, with the following exceptions:

(i) A control station operator may participate on behalf of an employer to the extent necessary in an emergency preparedness or disaster readiness test or drill that includes Amateur operations. Such participation shall be limited to the duration of such test or drill, and operational testing immediately prior to such test or drill. The Amateur transmissions shall be exclusively for the purpose of preparing for emergency response, disaster relief or the testing and maintenance of equipment used for that purpose.

(ii) An amateur operator may 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.

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