

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

REPLY 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 reply comments. ARRL responds herein to certain of the arguments made in comments filed 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. ARRL contends that there is an appropriate balance to be achieved between the need for continued protection of the essential, non-commercial character of the Amateur Service on the one hand, and the encouragement and facilitation of *bona fide* emergency preparedness and disaster relief drills and exercises on the other. For its reply comments, ARRL states as follows:

I. The Comments Generally Urge Caution in Any Modification of Section 97.113.

1. The comments in this proceeding overwhelmingly support the Commission's effort to facilitate Amateur Radio operations during emergency preparedness and disaster readiness drills and tests. There are now more than 200 comments filed in the proceeding, and therefore the Commission has a well-established "road map" supporting a very limited exception to Section 97.113(a)(3). The record makes clear that the Commission is on the right track in this proceeding. ARRL notes only a few comments which firmly oppose the Commission's proposal to permit, under limited circumstances, the participation of Amateur Radio Service licensees in emergency communications drills and exercises during which and pursuant to which they may transmit communications on behalf of their employers. A larger number of comments urge caution in implementing a change to the rule, lest the noncommercial character of the Amateur Service be compromised. ARRL is sympathetic to the concerns of these commenters, who believe that Amateur Service communications should remain completely separate and apart from any pecuniary involvement of the licensee. Some comments appropriately note that international treaty provisions defining the Amateur Service specifically require that Amateur Radio communications must be "without pecuniary interest." Others note that any need of an employer in participating in emergency communications drills and exercises (or in any other use of Amateur Radio) can be accommodated with non-employee volunteers instead of employees, and as such it is not necessary to carve out exceptions to the rules prohibiting Amateur communications in which the licensee has a pecuniary interest and compromise the non-commercial character of the Amateur Service. On its face, these comments note, a communication *on behalf of* an employer is a

communication in which the licensee, as an employee of that employer, has a pecuniary interest, and the Commission should not create rules that “open Pandora’s Box.”

2. These are persuasive arguments, and there is a case to be made that it is not necessary to modify the rules at all in this proceeding. ARRL, after its own spirited debate of this issue, and in consideration of that and all of the other arguments that were later enunciated in the comments in this proceeding, came to a slightly different conclusion -- but only slightly different. The bases and purposes of the Amateur Service in Part 97 of the Commission’s Rules stress the non-commercial character of the Amateur Service but, *just as importantly*, they stress the value of the Amateur Service to the public with respect to providing emergency communications. There is no doubt from the Commission’s rules that emergency and disaster relief communications can and should be provided by Amateur Radio whenever necessary, and occasionally it may be necessary during an emergency for an employee to transmit emergency communications on behalf of an employer.¹ There are several examples of this cited in the docket proceeding, including Amateur Radio operators who are hospital employees; employees of State offices of emergency services; municipal government public safety entities; emergency operations personnel and employees of emergency medical facilities, who typically and regularly engage in emergency communications planning, emergency communications exercises and drills, emergency interoperability exercises, and training for such. Without the ability to prepare for such emergency and disaster relief communications through

¹ See, the *Report and Order*, FCC 06-149, 21 FCC Rcd.11643, released October 10, 2006. (employees of disaster relief agencies or emergency response organizations who are Amateur licensees are not precluded by Section 97.113 from using the amateur service bands while on paid duty status. 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.)

periodic drills and exercises, the effectiveness of Amateur Radio emergency communications is compromised. This is an irrefutable fact.

3. So, ARRL came to the same ultimate conclusion as did most of the commenters in this proceeding: that there should be a carefully crafted, *enforceable*, and extremely narrow and limited exception to the general rule prohibiting communications on behalf of one's employer. The revised rule, ARRL urged, should be specific enough as to preclude any possible misunderstanding by Amateur Radio licensees (or their employers) about what communications are permitted and what are not. It is critical that this new rule notifies employees that they cannot use Amateur Radio stations to transmit business information at any time for their employers. It must also clearly alert employers that the employer must utilize its employees who are Amateur Radio operators only for Amateur communications *directly* related to, and in the course of, disaster relief and emergency preparedness drills and exercises on behalf of that employer.² ARRL urged, and continues to urge the Commission in the strongest possible terms to strictly limit Amateur Radio transmissions by an employee on behalf of the licensee's employer 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.”*** 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.³ The Commission must prohibit the conduct of

² Business restoration and operational communications by employees via Amateur Radio, for example, must continue to be precluded without exception.

³ The American Hospital Association, in reply comments filed April 19, 2010 in Docket 10-54 pertaining to AHA's proposed blanket waiver to permit hospital employees to participate in emergency communications

operational or business communications by Amateur Radio licensees who are employees of the organization involved in emergency preparedness, but should 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.

4. The only material divergence from the Commission's proposal in ARRL's comments is that ARRL's language would not limit eligible emergency preparedness drills 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 those drills or exercises are sponsored by a government entity, or, as examples, by ARRL's Amateur Radio Emergency Service®, the American Red Cross, or the Salvation Army.

II. The Commission Should Not Permit the Substitution of Amateur Radio For Appropriate Land Mobile, Commercial Mobile or Personal Radio Services

5. Of considerably more concern to ARRL than those few comments opposing any exception to the Section 97.113(a)(3) prohibition of Amateur communications on behalf of one's employer are several comments which propose to essentially eviscerate the prohibition of communications in which the licensee has a pecuniary interest. Several comments suggest permitting employees to conduct Amateur communications on behalf of their employers in circumstances in which Part 90, Part 74 or Part 95 communications facilities, or Commercial Mobile Radio Service facilities are clearly appropriate instead.

drills and exercises, stated at page 4 that “[t]o eliminate any ambiguity, ABA concurs with ARRL that the waiver should be limited to radio transmissions made by hospital employees that are ‘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.’ Limiting the waiver in this manner should eliminate concerns that hospitals could use amateur radio operations for non-emergency related communications. “

The clear danger in any modification of the present rule is that the modification will: (1) be so broad as to permit the commercial exploitation of the Amateur Service for the private benefit of an entity; (2) be insufficiently specific, thus making the rule unenforceable and subject to misinterpretation; or (3) be broad enough to permit an employee to be pressured to participate in communications for the principal benefit of the employer.

6. Because of this, ARRL urges the Commission to reject exploitive counterproposals which suffer these flaws, such as that of the Boeing Company.⁴ Boeing seeks the authority to conduct essentially routine, continuous, internal communications by means of Amateur Radio licensee-employees. Boeing seeks to allow employees of Boeing to transmit “operational and capabilities assessment transmissions” via Amateur Radio 30 days ahead of scheduled emergency communications drills and exercises.⁵ Boeing also seeks to permit continuous testing of automatically controlled digital communications systems by Boeing employee-Amateur Radio licensees. This, to the extent that the digital communications being transmitted by Amateur Radio during this continuous testing relate to the operations of Boeing (including the security of Boeing employees) is well outside the scope of any emergency communications drill or exercise. While ARRL appreciates Boeing’s recognition of the value and capabilities of the Amateur Service in actual emergency contexts, the vague nexus asserted by Boeing between the employee/Amateur Radio communications that Boeing wants authorized and the protection of Boeing employees is a transparent misuse of Amateur Radio for

⁴ See Boeing Company comments filed on or about May 24, 2010.

⁵ Therefore, presumably, if emergency communications drills and exercises are conducted monthly, these “operational and capabilities assessment” communications on behalf of Boeing would be conducted essentially continuously.

Boeing's own commercial benefit. Boeing's proposal is not only beyond the bounds of reasonableness, it is well beyond the scope of this proceeding.⁶

7. The comments of Arlington County, Virginia's Office of Emergency Management exhibit a misunderstanding of the present Section 97.113 rule requirements, and seek to undercut the purposes of the rule as well. Arlington County suggests that Section 97.113(a)(3) could be amended to provide, for example, that an employee should be permitted to utilize no more than five percent of his or her on-duty time to providing services as a "volunteer amateur operator in support of emergency exercises, drills and tests." This misses the point of the rule entirely. It is not the "on-duty time" of an employee that is at issue. The question in this proceeding is whether or not, and under what circumstances, an employee who is an Amateur Radio licensee can transmit communications on behalf of his or her employer. There is no doubt that an Amateur Radio operator can utilize an Amateur Radio station to conduct normal Amateur Radio communications (including participating in emergency communications drills and exercises), whether or not that person is or is not being paid by an employer at the time, as long as those communications are not being done "on behalf of" the employer. The Section 97.113(a)(3) rule is triggered, however, when those communications are being done by the employee on behalf of his or her employer. If the Amateur Radio operator is an employee of a hospital, for example, and if the employee's participation in an emergency communications drill or exercise is on behalf of the hospital, and if the

⁶ Notably, the functions that Boeing wishes to make of Amateur Radio communications can be accommodated without any rule change by Amateur Radio volunteers (but not by Boeing employees), if Boeing can find volunteers willing to exploit their avocation for such commercial purposes. Also, it is unclear whether Boeing understands the current Section 97.113(a) rule; there is nothing wrong with a Boeing employee's licensed use of an Amateur station located at Boeing's facilities, as long as the communications transmitted by that licensee/employee are not "on behalf of" Boeing. Therefore, testing of a digital Amateur Radio station to insure its functionality in the event of an emergency is fine, as long as the test transmissions do not relate to Boeing's operations or its own business affairs.

transmissions relate to the hospital's facilities or operations, the present Section 97.113(a)(3) is violated, absent a Commission waiver.

8. Arlington County's apparent misunderstanding of the issue in this proceeding notwithstanding, its suggestion for the scope of the relaxation of Section 97.113(a) (3) is untenable. Arlington County seeks exclusions from Section 97.113(a)(3) for "employees of . . . non-profit (non-government organizations), and other Critical Infrastructure entities such as telecommunications, cable, satellite carriers, TV or other such commercial entities which during national emergencies may provide needed life support and goods that directly benefit the public interest through the activation of [Arlington County's Auxiliary Communications Service] at entities such as WAL-MART, LOWES, HOME DEPOT, CONAG, Union Pacific, FEDEX, etc." Arlington County explains that these commercial entities provide "sustainment infrastructure" such as food, water, construction supplies, and the like, and Amateur Radio can facilitate "logistical responses to impacted areas."⁷ While Amateur Radio is an important component of emergency communications planning, affording employees of a virtually unlimited number of commercial entities a blanket exemption from the important limitations of Section 97.113(a)(3) so obviously compromises the non-commercial character of the Amateur Service as to make the proposal unworthy of serious consideration.

III. ARRL's Proposed Language for Modification of Section 97.113 is An Appropriate Balance.

9. ARRL suggests that its proposed language for modification of the rule reaches the correct balance between no change in the rule and the virtual abandonment of it as

⁷ Amateur Radio's role in emergency communications is to protect against immediate threats to life and property, not for long-term logistical responses to impacted areas after communications infrastructure is restored.

suggested in a few of the comments, such as those cited above. Any rule change should be made 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.

10. ARRL reiterates that 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. 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 to ARRL's comments in this proceeding, filed May 24, 2010.

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

change proposed in this proceeding only in accordance with the specific language proposed by ARRL in the Appendix to its Comments in this proceeding.

Respectfully submitted,

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