

Comments in Opposition to Proceeding RM-11699

Submitted by  
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I am writing to express my opposition to adoption of RM-11699, proposed by Don Rolph, AB1PH to allow amend FCC Part 97 regulations governing amateur radio to be amended to allow encrypted communications when participating in emergency service operations or related training exercises. I believe these changes would do harm to the regulatory framework under which Amateur Radio has operated since its inception, and would not increase the ability of radio amateurs to provide additional meaningful services to served emergency agencies.

Part 97.113.4 explicitly prohibits:

Music using a phone emission except as specifically provided elsewhere in this section; communications intended to facilitate a criminal act; messages encoded for the purpose of obscuring their meaning, except as otherwise provided herein; obscene or indecent words or language; or false or deceptive messages, signals or identification.

It does not provide its rationale for this prohibition against obscuring codes, but I do not think it is difficult to understand the rationale.

First of all, amateur radio is licensed as a non-commercial service, and charged to be self-policing. If the meaning of messages were obscured by encryption, we limit the ability of radio amateurs to perform this vital self-policing action. This makes the amateur radio service vulnerable to abuse and exploitations by commercial and/or pecuniary interests which are not in the purpose or spirit of amateur radio. Rolph's proposal adds no additional safeguards to counteract this potential for abuse, and so should be viewed as potentially reckless.

Secondly, amateur radio exists to help promote international good will by allowing conversations of a purely harmless nature even between states which currently may be quite hostile. If governments are unable to verify that these communications are, in fact, harmless, they may act to harass radio amateurs in their countries or disallow amateur radio entirely. While I am sure Rolph's intention deals mostly with emergency communications which take place over short distances on VHF/UHF, the propagation of signals on HF and the increasing use Internet linking make it entirely possible that international regulations and treaty concerns would need to be considered, especially with respect to third party traffic (section 97.115). Rolph's proposal does not address these difficult issues at all, or even admit to their existence.

Each of these problems might be overcome, and may in fact be worthy of working toward if there was a clear utility in enacting this change. But this is where Rolph's proposal really falls apart: it simply provides no compelling problem that is solved by this radical change to Part 97. Rolph claims that:

Commenters argue that transmission of sensitive data, such as medical information that is subject to privacy requirements under the Health Insurance Portability and Accountability Act (HIPAA), is often a necessary aspect of emergency response, and therefore the use of encryption should be permitted under appropriate circumstances, such as by credentialed operators.

This claim is just that: an empty claim. While there might be some legitimate fear that an amateur acting in good faith during an emergency situation might reveal information which would subject him to the

possibility of legal liability under HIPAA, there is simply no evidence that such a case has ever occurred. Throughout the long history of amateur participation in emergencies, and the seventeen years since HIPAA took effect, you would think that such a case must have occurred, but Rolph does not document even a single case. This would seem to credibly lead us to view that the "necessary aspect of emergency response" that Rolph refers to is simply not all that necessary.

But even if we accept this claim, the real question is should be: "Are communications under Part 97 really appropriate for this kind of communication?"

We are prohibited under section 113 from transmitting "communications, on a regular basis, which could reasonably be furnished alternatively through other radio services." Emergency and public safety organizations have already begun to move toward narrowband, encrypted radios licensed under Part 90. These radios are incompatible with operation under Part 97 and operation on amateur frequencies without substantial and impractical modification. The obvious solution to this apparent dilemma is that amateurs working as volunteers in EMCOMM simply be issued Part 90 radios, and perform their volunteer actions under Part 90 (a radio service which is being engineered with this kind of emergency compliance specially for emergency communications) and not rely on Part 97 equipment or frequencies for anything beyond the traditional health and welfare traffic which formed the core of amateur radio emergency services.

Lastly, I'd also act to consider that this proposal is the action of an individual, acting largely in isolation and without the involvement and approval of any of the major amateur radio emergency volunteer organizations, nor the approval and consent of any more than the slimmest fraction of radio amateurs as a whole. Changes of such import surely require more debate and careful consideration.

I urge the FCC to reject this proposal.

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