

OCT 15 2009

FCC Mail Room

Before the

Federal Communications Commission

Washington, DC 20554

In the Matter of	}	
	}	
Amendment of Section 97	}	RM -
related to	}	
Emergency Communications	}	

PETITION FOR RULE MAKING

To the Secretary:

This is a Petition for Rule Making to amend Part 97 to add the following underlined text:

§97.111 Authorized transmissions.

(a) An amateur station may transmit the following types of two-way communications:

(1) Transmissions necessary to exchange messages with other stations in the amateur service, except those in any country whose administration has notified the ITU that it objects to such communications. The FCC will issue public notices of current arrangements for international communications;

(2) Transmissions necessary to meet essential communication needs and to facilitate relief actions.

(3) Transmissions necessary to exchange messages with a station in another FCC-regulated service while providing emergency communications;

(4) Transmissions necessary to exchange messages with a United States government station, necessary to providing communications in RACES; and

(5) Transmissions necessary to exchange messages with a station in a service not regulated by the FCC, but authorized by the FCC to communicate with amateur stations. An amateur station may exchange messages with a participating United States military station during an Armed Forces Day Communications Test.

(6) Transmissions necessary for disaster relief or emergency response, including training exercises, planning, drills or tests, without regard to whether the amateur operator has related employment, where the transmissions are for the exclusive use of amateur radio operators for noncommercial purposes.

Along with this the following ‘housekeeping’ in related rules is requested:

§97.113 Prohibited transmissions.

(a) At all times and on all frequencies, each control operator must give priority to stations providing emergency communications, except to stations transmitting communications for training drills and tests as 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, except as otherwise provided in these rules.

Discussion by the Petitioners:

This petition is presented in the spirit of Part 97.1. The basis and purpose of amateur radio is long settled among FCC licensees in the amateur service, and the public. It is a “voluntary noncommercial communication service, particularly with respect to providing emergency communications.”¹

Petitioners are FCC licensed amateur radio operators, whose interests are affected by these rules.

It is in the public interest for licensed amateurs who volunteer their time and investment in equipment to have communication with amateurs who are compensated for their official roles in emergencies. The compensation

in these instances usually involves a noncommercial, government payroll or a not-for-profit public service agency.

The current rules recognize other roles where amateur radio is used by, or to arguably benefit, certain compensated persons. These include:

Teaching ²

Certain telegraphy practice and Bulletins ³

Swap nets and other sales ⁴

Food orders, making appointments ⁵

Petitioners also understand that certain communications with compensated emergency personnel during an actual emergency are allowed, while communications involving drills, tests and planning are not.

With the importance of emergency communications, and efforts to train operators, practice, plan and test equipment to provide for it, these communications should not be subject to any higher regulatory standard than applies to other activities that have been long established in the amateur rules. We should do no less for emergency communications, and the planning for it, than we do for situations where someone is compensated in the other situations described above.

The current rules also provide for communications by amateurs with other services. ⁶ We understand that persons involved in those other services are not uncompensated volunteers.

Petitioners believe that where communications in the amateur service are lawful, any related drills, tests and planning for those activities should be permitted as well. There is a special public interest in the success of drills, tests and planning for emergencies.

This petition has become necessary because of statements by the FCC legal staff to David Coursey, N5FDL, Tom Blackwell, N5GAR, and similar statements to other amateurs that have been reported in the press. The FCC staff has taken the position that licensed amateur employees of an emergency response organization, such as a hospital, may not participate in an emergency drill. ⁷

Anecdotal evidence suggests that, for decades, many amateurs have been unintentionally violating the existing § 97.113(a). The Commission staff's recent statements concerning its interpretation of § 97.113(a) have come as

a surprise, especially those who work as professional first responders, emergency managers, and medical personnel.

For example, some amateurs did not understand that the Commission's interpretation of "business" included government agencies (at all levels), disaster service organizations, hospitals, and similar organizations.

Further, these amateurs believed, based on the exemption from the requirements of § 97.113(a) already granted to certain emergency communications, that training and other emergency-related communications were also exempt.

This petition seeks to make clear that emergency communications, as well as related drills, tests, and planning communications are exempt from the provisions of § 97.113(a). This adds consistency and ease-of-interpretation to the Commission's rules. It also removes § 97.113(a) as an impediment to effective training and planning for emergency communication.

The Commission licenses individuals in the amateur radio service, granting rights and responsibilities to persons, including children. Individual licensees are not usually represented by attorneys in the course of our practice in following these rules. Petitioners believe it is not in the public interest for these licensed individuals to have to take time to go research rules during emergencies, or during activities related to planning, drills or tests for participation in emergencies. The regulations on these communications should be easy to understand and apply. We believe rules that are easy for these individuals to comprehend and understand are rules that will inspire respect, not confusion.

Current rules have created confusion and unintentional violations by well-meaning public servants. This hampers the ability of amateur radio operators to train with the professionals they will work with during emergencies. It is inconsistent that emergency communication is legal, while training for emergencies, somehow, is not.

A limited cross-platform. Petitioners believe it is in the public interest that a limited cross-platform of communication related to emergencies be permitted on amateur frequencies. This is two-way communication between non-compensated amateurs and licensed but compensated amateurs who are involved in drills, tests and planning for as well as carrying out the emergency communications. We also believe that a chill or prior restraint on this communication has a potential to restrain or delay persons from communicating a redress of grievances to the government, or engage in other activities guaranteed by the last sentence of the 1st Amendment to the Constitution of the United States. ⁸

No commercial encroachment. Petitioners do not want to see the amateur bands taken over by inter-office communication among government employees or the offices of other professional emergency responders. This is why we propose the regulatory scheme providing for situations where the transmissions are for the exclusive use of amateur radio operators for noncommercial purposes. We propose no change to §97.113(a) (5), which prohibits certain communications which could reasonably be provided through other radio services.⁹ This creates the limited cross-platform between volunteer amateur operators and certain employed amateur operators. We believe this is in the public interest, just as drills and tests of the other situations described in § 97.111 are in the public interest.

As an example, we do not want to see a local ambulance company decide it would be less expensive to dispatch its vehicles with amateur radio, rather than the commercial radios available to their industry. Such reception and use of content involving internal business operations of the ambulance company would not comply with § 97.113(a) (5), and the undesired business communications would be deterred.

We believe this will serve to provide existing uncompensated, volunteer amateur operators with the functions prescribed in § 97.1, through a limited cross-platform where personnel employed by a noncommercial emergency response agency may participate in training, drills and tests that benefit the volunteers and the served agencies, alike.

The public interest. Petitioners believe it is in the public interest to establish rules that will assure that the following situations are lawful:

A municipal fire department is the sponsor of the local Community Emergency Response Team (CERT) organization. A paid firefighter who is also a licensed amateur should be able to participate in on-the-air drills or planning discussions with other amateurs who volunteer as CERT members.

A city police department has facilities to monitor amateur frequencies, as anticipated by Section 705(a) of the Communications Act (the last sentence).¹⁰ Several 911 operators are licensed amateurs and need to use information transmitted by others on the amateur bands, and cause police in the field to respond. As an emergency communication, this is already legal. Petitioners believe these employed, licensed amateurs should be able to participate in planning, drills and tests related to this function. Further, it would not be in the public interest for a criminal defendant to allege that some drill or test involving a licensed amateur who is a police officer violated some rule, and

somehow use this argument in the course of a criminal defense in court.

The National Weather Service has paid, professional meteorologists who lead Skywarn efforts that are intended to result in accurate forecasts of severe weather. They issue public statements of "watches" and "warnings." The intent, generally, is to provide accurate information that can be used with other efforts that work to protect and save lives and property. This agency encourages amateurs to volunteer their time, effort and equipment in making reports on the air of weather conditions that the NWS staff observes with government owned weather radar. The amateur bands are used for two-way communication of information about severe weather, with unpaid, volunteer amateurs in the field. These amateurs have usually received training that is part of the NWS budget, at local Skywarn schools. The NWS office is equipped with amateur radio equipment at government expense. The paid staff of the NWS includes licensed amateurs. NWS staff business cards are often printed with the amateur call signs of the staff Meteorologists. The paid staff of the NWS should be able to participate in training, tests and planning over the air on amateur frequencies, along with the unpaid volunteers.

A county Emergency Management office, staffed by paid professionals on the government payroll, is equipped with amateur radio transceivers for communicating with amateurs who sign up to volunteer in the field. RACES training exercises are conducted from the Emergency Management office, which sponsors and provides governmental leadership of the RACES organization. Other two-way communication related to emergency conditions, as well as health and welfare, are planned. The staff of the office has been encouraged to obtain, and have obtained, amateur radio licenses. The paid staff of this office should be able to participate in training, tests and planning over the air on amateur frequencies, along with the unpaid volunteers.

The State Emergency Management office also has amateurs employed on its staff. These paid amateurs are involved in two-way communication with other amateurs, with communication related to emergencies and also drills and tests. Also, from time to time emergency conditions require that certain areas be closed to the public. (For example, areas with downed power lines after a hurricane.) The office is involved in determining who is allowed inside the closed areas. They will be making decisions about whether certain licensed amateurs will be allowed inside. It is anticipated that two-way communication about conditions inside these areas will be provided to the State officials, who are licensed

amateurs, using amateur radio. Some of the content is directly related to the emergency, and some is related to "health and welfare." The state also has a policy to allow its paid employees who are licensed amateurs to have time off from unrelated staff positions, and be assigned instead to "respond to disasters." ¹¹ Drills and tests involving the paid personnel who hold amateur licenses should be allowed on amateur frequencies.

In June, 2009, ARRL published on its web page an account of an exercise involving amateurs and paid government emergency personnel. It was titled "Texas Amateurs Participate in Interoperability Communications Exercise with Defense Department." It included photographs credited to Lee Cooper, W5LHC, a Texas state employee who participated in the exercise, and quotes of his comments. The article also included an account of an astronaut on board the International Space Station (ISS) who communicated to other amateurs who are described as members of NASA's Johnson Space Center Amateur Radio Club, who handled the message from the ISS. ¹² Shortly after publishing the article on the ARRL web page, the article was removed. Drills and tests like this involving paid personnel who hold amateur licenses should be allowed on amateur frequencies where this is a part of normal amateur radio communications, and non-compensated amateurs are involved. Implications of the FCC staff's position that might apply to astronauts in space or amateurs who are members of the JSC ARC should be removed.

The hospital drill described by FCC Attorney Laura Smith in her communication with Mr. Coursey should be allowed where it involves noncommercial two-way communication that is for the exclusive use of amateur operators.

Request for Expedited Consideration

As the petitioners' interest in this matter has become known in the amateur radio community, we have been contacted by a large number of individuals and organizations who are changing their procedures, some quite radically, to come into compliance with §97.113, as they now understand it.

The Petitioners believe this has a negative impact on amateur radio emergency preparedness and the ability for the amateur community and served agencies to work together. It also speaks to the fact that § 97.113(a) has been widely--if unintentionally--misunderstood for many years and that the change we propose

(essentially reestablishing the status quo for many) will have no negative or unintended side effects.

For that reason, Petitioners respectfully request an expedited consideration of this issue.

Until the Commission completes an action to change the rules on this issue, we will fully abide by the existing published rules.

Respectfully submitted,

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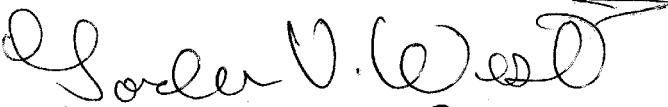
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¹ Subpart A--General Provisions

§97.1 Basis and purpose.

The rules and regulations in this Part are designed to provide an amateur radio service having a fundamental purpose as expressed in the following principles:

- (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.**

² §97.113c 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.

³ §97.113d 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, provided that the station transmits such telegraphy practice and bulletins for at least 40 hours per week; schedules operations on at least six amateur service MF and HF bands using reasonable measures to maximize coverage; where the schedule of normal operating times and frequencies is published at least 30 days in advance of the actual transmissions; and where the control operator does not accept any direct or indirect compensation for any other service as a control operator.

⁴ §97.113a(3) ... Amateur operators may, however, 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;

⁵ PR Docket 93-136, Notice of Proposed Rule Making, released July 2, 1992: “9. The proposed rule amendments would expand the scope of public service communications and personal communications permitted in the amateur service. More specifically, we propose to relax the prohibition against amateur stations transmitting any communications that could be furnished via other radio services. Our intent is to allow amateur operators who so desire to increase their public service activities in support of parades, races, and other public gatherings. We also propose to remove the outright bar on amateur stations transmitting communications that could facilitate the business affairs of any party. This change would allow amateur stations to transmit, for example, communications relating to amateur radio club business activities. Amateur stations could also transmit communications, such as ordering food, lodging, and transportation, that incidentally facilitated the commercial activities of some party. We further propose to permit control operators to accept compensation as an incident of a teaching position during periods of time when the station is used for classroom instruction. The general prohibition against amateur operators transmitting messages for hire or for material compensation, direct or indirect, however, would remain in the rules.”

⁶ §97.111 Authorized transmissions.

(a) An amateur station may transmit the following types of two-way communications:

(3) Transmissions necessary to exchange messages with a station in another FCC-regulated service while providing emergency communications;

(4) Transmissions necessary to exchange messages with a United States government station, necessary to providing communications in RACES; ...

⁷ FCC Attorney Laura Smith said: “Simply put, a hospital drill that includes any amateur employees of the hospital is a violation of Section 97.113(a) (3). It does not matter if the amateur is “off duty” or on their “lunch hour”; it does not matter if their job description does not include the so-called operation of the amateur radio; it does not matter if they are not getting paid specifically for the drill; it does not matter if they sign a statement indicating that they are doing this strictly as a volunteer. I trust I am making

this clear, it does not matter what machinations you come up with, there is no loop hole to the rule. If they are a hospital employee, they may not use the radio on behalf of their employer – period."

⁸ "Congress shall make no law ... abridging the freedom of speech, ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

⁹ §97.113 (a) No amateur station shall transmit: 5) Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.

¹⁰ SEC. 705. [47 U.S.C. 605] UNAUTHORIZED PUBLICATION OF COMMUNICATIONS.

(a) Except as authorized by chapter 119, title 18, United States Code, no person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpoena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. *This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is transmitted by any station for the use of the general public, which relates to ships, aircraft, vehicles, or persons in distress, or which is transmitted by an amateur radio station operator or by a citizens band radio operator.* (Emphasis mine).

¹¹ Texas Government Code, Subchapter Z, Sec. 661.919. **AMATEUR RADIO OPERATORS.** (a) A state employee who holds an amateur radio station license issued by the Federal Communications Commission may be granted leave not to exceed 10 days each fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or state compensatory time if the leave is taken: (1) with the authorization of the employee's supervisor; and (2) with the approval of the governor. (b) The number of amateur radio operators who are eligible for leave under this section may not exceed 350 state employees at any one time during a state fiscal year. The division of emergency management in the governor's office shall coordinate the establishment and maintenance of the list of eligible employees.

¹¹ The message was 'Good luck with drill.'