

FCC MAIL SECTION

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

JUL 28 3 37 PM '93

PR Docket No. 92-136

DISPATCHED BY
In the Matter of

Amendment of Part 97 of the
Commission's Rules to Relax
Restrictions on the Scope of
Permissible Communications in
the Amateur Service.

7349
RM-7694
RM-7895
RM-7896

REPORT AND ORDER

Adopted: July 15, 1993;

Released: July 28, 1993

By the Commission:

I. INTRODUCTION

1. In the *Notice of Proposed Rule Making (Notice)*¹ in this proceeding we proposed to amend the amateur service rules to permit greater flexibility for amateur stations while transmitting communications for public service projects and personal matters without altering in any way the nature and purpose of the amateur service. This *Report and Order* adopts the rules substantially as proposed.

II. DISCUSSION

2. The international Radio Regulations define 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.² For this reason, Section 97.113(a) of the Commission's Rules, 47 C.F.R. § 97.113(a) prohibits amateur stations from transmitting any communications the purpose of which is to facilitate the business or commercial affairs of any party, or as an alternative to other authorized radio services. The amateur service community, however, generally desires a relaxation of this restriction to accommodate contemporary communications demands and the operational capabilities of amateur station licensees. Noting that it appears the

amateur community appreciates both the benefits and the burdens of such relaxation, we proposed to relax the restriction. Over eighty comments and reply comments were filed in response to the *Notice*.

3. The comments convincingly support the proposal. Although some comments urge caution to prevent exploitation of the service,³ they show that the present rules hamper amateur operators from serving the public as well as diminish the value of the amateur service in satisfying personal communication needs. The vast majority of comments support our proposal to relax the prohibition against using the amateur service as an alternative to other radio services such as the maritime services, land mobile radio services or the cellular telephone service. They believe that the current prohibition is overly cautious and unnecessary.⁴ We concur. The capabilities of modern mobile communication services have all but eliminated the incentive to use the amateur service instead of those services. We will relax, therefore, the current prohibition, as proposed, to provide amateur operators greater flexibility for public service and personal communications.

4. The American Radio Relay League (League) notes that it expects no noticeable change in amateur operations as a result of this rule making.⁵ This relaxation of the restrictions contained in the rules allows the amateur community to satisfy its contemporary needs for communications in return for greater responsibility for self-regulation and cooperation in the use of its allocated frequencies. This relaxation also will satisfy the desire of the licensees of many amateur stations to retransmit propagation and weather forecast information originating from United States Government stations. The revised rule provides, therefore, that propagation and weather forecast information intended for use by the general public and originated from United States Government stations can be retransmitted by any amateur station without permission of any government agency. In addition, as requested by the League, we shall clarify that the rule requiring prior approval for amateur station retransmission of United States Government communications applies only to communications, including incidental background music, between a space shuttle and its associated earth stations.

5. Some comments suggest even greater relaxation than we proposed.⁶ The League, however, states that the proposed rule is a good, workable middle ground offering the requisite protection against exploitation.⁷ The National Association of Broadcasters and The Radio-Television News Directors Association (NAB/RTNDA) request that we eliminate the existing immediacy requirement before amateur operators can become involved in news gathering activities.⁸ The NAB/RTNDA wants amateur operators to be able to disseminate any news information when no other means of communications are available.⁹ Mr. Michael

¹ 7 FCC Rcd 4231 (1992).

² See No. 53 of the ITU Radio Regulations (Geneva, 1990) (hereafter Radio Regulations). The essence of this definition is carried over to the Communications Act of 1934, as amended, which regulates the amateur service in the United States, and to various Commission rule sections. See 47 U.S.C. § 153(q) and Sections 97.3(a)(4) and 97.113 of the Commission's Rules, 47 C.F.R. §§ 97.3(a)(4) and 97.113.

³ Reply comments of the Portland Amateur Radio Club at 2, comment of Wireless Institute of New Orleans at 2.

⁴ Section 97.113(a) states, in part: No station shall transmit communications as an alternative to other authorized radio

services, except as necessary to providing emergency communications.

⁵ Comments of League at 2-3.

⁶ For example, see comments of Paul S. Courson at 1, Robert J. Roehrig at 1, Joseph Eisenberg at 1, Santa Barbara Amateur Radio Club (SBARC) at 1.

⁷ Comments of the League at 9.

⁸ See Section 97.113(c) of the Commission's Rules, 47 C.F.R. § 97.113(c).

⁹ See Joint Comments of The National Association of Broadcasters and The Radio-Television News Directors Association at 1-3.

Lonneke states, however, that the NAB/RTNDA request is a self-serving idea designed to offset shrinking news budgets and smaller news staffs.¹⁰ The League also opposes the NAB/RTNDA request. It states that NAB/RTNDA is attempting to revisit an issue twice resolved against it and that we should not modify the proposed rule to accommodate NAB/RTNDA.¹¹ We do not believe that the amateur service frequencies should be used generally for news gathering and, therefore, we are retaining the immediacy requirement for news gathering activities.

6. The one detail that we are not able to accommodate is the League's request that we provide a list of anecdotal examples of permitted and prohibited communications. For us to do so would necessitate that we intrude upon the day-to-day functioning of the amateur service to a far greater degree than we desire. Further, in view of the wide diversity in the types of communications in which amateur operators want to engage, there would have to be thousands of examples. Therefore, we decline to devote staff resources to the development and maintenance of such a list. Rather, we will rely on the amateur service's traditions of self-regulation and cooperation between licensees, the cornerstones of the amateur service, to determine whether specific communications should be transmitted on amateur service frequencies. We also will include the League's criterion, which we have incorporated in the rules we are adopting in this proceeding, that any amateur-to-amateur communication is permitted unless specifically prohibited, or unless transmitted for compensation, or unless done for the pecuniary benefit of the station control operator or his or her employer.¹²

7. In summary, we have decided to amend the amateur service rules substantially as proposed by the League in order to allow amateur operators more flexibility to provide communications for public service projects as well as to enhance the value of the amateur service in satisfying personal communications needs. Amendment of the rules as the League requests will allow licensees to use amateur service frequencies, for example, to facilitate events such as races and parades, to support educational activities, to provide personal communications such as making appointments and ordering food, to collect data for the National Weather Service, and to provide assistance voluntarily even where there are other authorized radio services available. We believe that this action will expand the benefits derived from the amateur service by the general public as well as amateur service licensees.

III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that effective 30 days after publication in the Federal Register Part 97 of the Commission's Rules, 47 C.F.R. Part 97, IS AMENDED as set forth below. Authority for this action is found in Sections 301, 303(l)(1) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 301, 303(l)(1) and (r).

9. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

10. For further information, contact the Personal Radio Branch, Special Services Division at (202) 632-4964.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
William F. Caton
Acting Secretary

APPENDIX

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

Part 97 - Amateur radio service

1. The authority citation for Part 97 continues to read as follows:

Authority citation: 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.

2. Section 97.113 is revised to read as follows:

§ 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;

(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, 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;

(4) Music using a phone emission except as specifically provided elsewhere in this Section; communications intended to facilitate a criminal act; messages in codes or ciphers intended to obscure the meaning thereof, except as otherwise provided herein; obscene or indecent words or language; or false or deceptive messages, signals or identification;

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

¹⁰ Reply Comment of Michael Lonneke at 2.

¹¹ Reply Comments of the League at 6-9.

¹² RM-7895 at 2-11. The content of messages transmitted between amateur stations located in different countries is subject to international Radio Regulation No. 2732. This Radio Regulation is codified as Section 97.117 of the Commission's Rules, 47

C.F.R. § 97.117. Content restriction on messages between an amateur station located at a place where the amateur service is regulated by the FCC and a station within the jurisdiction of any foreign government is not affected by this amendment of Section 97.113.

(b) An amateur station shall not engage in any form of broadcasting, nor may an amateur station transmit one-way communications except as specifically provided in these rules; nor shall an amateur station engage in any activity related to program production or news gathering for broadcasting purposes, except that communications directly related to the immediate safety of human life or the protection of property may be provided by amateur stations to broadcasters for dissemination to the public where no other means of communication is reasonably available before or at the time of the event.

(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, 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.

(e) No station shall retransmit programs or signals emanating from any type of radio station other than an amateur station, except propagation and weather forecast information intended for use by the general public and originated from United States Government stations and communications, including incidental music, originating on United States Government frequencies between a space shuttle and its associated Earth stations. Prior approval for shuttle retransmissions must be obtained from the National Aeronautics and Space Administration. Such retransmissions must be for the exclusive use of amateur operators. Propagation, weather forecasts, and shuttle retransmissions may not be conducted on a regular basis, but only occasionally, as an incident of normal amateur radio communications.

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