
Before the
Federal Communications Commission
Washington, DC 20554

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

To: The Commission

**COMMENTS OF
THE AMERICAN HOSPITAL ASSOCIATION**

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SUMMARY

The American Hospital Association (AHA) urges the Commission to amend its rules to permit amateur radio operators to participate in emergency preparedness and disaster readiness drills, even when they are employees of public safety agencies and other entities participating in the drills, such as hospitals, and regardless of whether the drills are “government-sponsored.”

Amateur radio operations are widely recognized as a critical component of emergency communications. The Commission has recognized that amateur radio operators provide essential communications during emergency situations. The Commission’s Public Safety and Homeland Security Bureau (PSHSB) website sets forth guidelines for the health care field to prepare for emergencies and identifies amateur radio as an important component of emergency communications planning by hospitals and other health care facilities. The PSHSB also provides best practices models for use by the industry and the key recommendation in one such model is utilizing amateur radio for communications redundancy. Similar conclusions have been reached by other government agencies, and certification and accreditation bodies.

Given the recognized importance of amateur radio in emergency situations, the AHA agrees with the Commission’s tentative conclusion that an amateur operator should not be precluded from participating in emergency preparedness drills merely because the operator is an employee of one of the organizations participating in the drill. Furthermore, the decision to amend the rules to permit such operations is consistent with prior Commission findings that impediments to amateur radio use in emergency situations should be removed and supported by the comments submitted in response to the AHA’s February 17 waiver request.

The amended rules, however, should not limit authorized participation to emergency preparedness drills sponsored by a government agency. Hospitals participate in a wide range of drills – from drills fully planned, funded and conducted by a government agency; to those funded by a government agency but planned and carried out by the hospitals in a community; to drills entirely planned, funded and carried out by a single hospital. A requirement that limits participation to government-sponsored drills would create ambiguity and needlessly limit amateur participation in emergency preparedness drills.

Accordingly, the Commission should amend its rules to permit amateur radio operators to participate in any emergency preparedness drill, regardless of whether the amateur operator is an employee of a drill participant or whether the drill is government sponsored.

TABLE OF CONTENTS

SUMMARY i

I. BACKGROUND 1

 A. FCC Recognition of Amateur Radio as Critical Component of Emergency Communications 1

 B. Amateur Radio Recognized as Important Emergency Communications Link by Other Entities..... 4

 C. Petition for Rulemaking 6

 D. Public Notice Undercuts Ability of Amateur Operators to Prepare for Emergency Situations 7

 E. The AHA Blanket Waiver Request and Associated Record..... 7

 F. Notice of Proposed Rulemaking Proposes to Amend Section 97.113 to Permit Amateur Operators to Participate in Emergency Preparedness Drills Even if Participation is on Behalf of Employer 8

II. AMATEUR RADIO OPERATORS SHOULD BE AUTHORIZED BY RULE TO PARTICIPATE IN EMERGENCY PREPAREDNESS DRILLS ON BEHALF OF THEIR EMPLOYERS, REGARDLESS OF DRILL SPONSORSHIP..... 9

CONCLUSION..... 12

APPENDIX A..... 13

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On behalf of our more than 5,000 member hospitals, health systems and other health care organizations, and our 40,000 individual members, the American Hospital Association (AHA) hereby submits comments in response to the above-captioned *Notice of Proposed Rulemaking*.¹ As discussed below, the Commission should amend its rules to permit amateur radio operators to participate in emergency preparedness and disaster readiness drills, even when they are employees of public safety agencies and other entities participating in the drills, such as hospitals, and regardless of whether the drills are “government sponsored.”

I. BACKGROUND

A. FCC Recognition of Amateur Radio as Critical Component of Emergency Communications

One of the core principles behind the creation of the Amateur Radio Service was the “[r]ecognition and enhancement of the value of amateur service to the public as a voluntary non-commercial communications service, *particularly with respect to*

¹ *Amendment of Part 97 of the Commission’s Rules Regarding Amateur Radio Service Communications During Government Disaster Drills*, WP Docket No. 10-72, *Notice of Proposed Rulemaking*, __ FCC Rcd. ____ (rel. Mar. 24, 2010) (“NPRM”).

*providing emergency communications.*² The Commission also has stressed that, due to its “continuing efforts to ensure that reliable communications are available during emergencies and other times of crisis,” it would not adopt rules that “place restrictions on the type of emergency communications that amateur stations may transmit. . . .”³ Thus, in 2006 it amended Section 97.111(a) “to clarify that amateur stations may, at all times and on all frequencies authorized to the control operator, make transmissions necessary to meet essential communication needs and to facilitate relief actions.”⁴

The Public Safety and Homeland Security Bureau’s (PSHSB) website identifies amateur radio as an important component of emergency communications planning by hospitals and other health care facilities. According to the website, “[h]ospitals, clinics, nursing homes, and other health care facilities offer[ing] vital services to the public, especially during and immediately following an emergency . . . should have in place an emergency plan to reduce the disruption of essential services when an emergency situation occurs.”⁵ The PSHSB established guidelines “to help the Health Care Sector ensure their continuity of operations and manage the security and operability of their communications systems and networks during emergencies.”⁶ Among the guidelines:

- Engage in employee communications training exercises, including cross training between communications team members.⁷
- Establish a backup communications plan and “identify and include HAM [amateur] radio operators in your emergency operations plan and when activated, identify where they will be assigned. It is important to include all known HAM, Amateur Radio Emergency Service (ARES), and SHARES

² 47 C.F.R. § 97.1(a) (emphasis supplied).

³ *Amendment of Part 97 of the Commission’s Rules Governing the Amateur Radio Services*, WT Docket No. 04-140, *Report and Order*, 21 FCC Rcd 11643, ¶ 46 (2006) (2006 Order).

⁴ *Ibid.*

⁵ <http://www.fcc.gov/psbs/emergency-information/guidelines/health-care.html>.

⁶ *Ibid.*

⁷ *Ibid.*

[Shared Resources High Frequency Radio Program] operating personnel in the area to maximize their assistance during critical times.”⁸

- Periodically test all backup communications systems.⁹

Thus, the PSHSB’s guidelines recommend establishing an emergency operations plan that includes (i) training of employees with communications expertise, (ii) participation of amateur radio operators in back-up communications plans, and (iii) establishing a backup communications system.

The PSHSB also provides best practices models for use by the industry.¹⁰ One such best practice model is a “Primer on Redundant Communications” (Primer). The Primer establishes recommendations for hospitals and health departments regarding telecommunications technology and was created by a State Expert Panel on Communications established by the Wisconsin Division of Public Health, Hospital Disaster Preparedness Program.¹¹ The key recommendation in the Primer is that “each hospital and health department in the State of Wisconsin have four tiers of communications redundancy, with the final tier being ‘Amateur (HAM) Radio.’”¹²

The Primer states that “[e]ach hospital and health department is to include HAM radio as part of their redundant communications plan” and that, “[i]f an employee has a HAM radio license, he/she may operate the radio, if radio operations are not part of

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ <http://www.fcc.gov/pshs/clearinghouse/best-practices.html>.

¹¹ See <http://www.fcc.gov/pshs/docs-best/redundantCommunications07.doc>.

Representatives from hospitals, health departments, Emergency Management, law enforcement, National Guard, telecommunications companies, amateur radio, fire departments, and 911 Dispatch comprised the Panel.

¹² Primer at 2.

his/her daily job responsibilities.”¹³ Consistent therewith, “[e]ach hospital and health department is to consider having a staff person with a HAM radio license.”¹⁴

B. Amateur Radio Recognized as Important Emergency Communications Link by Other Entities

The Federal Emergency Management Agency (FEMA) issued an Emergency Management Guide for Business and Industry in October 1993 and stressed the need to plan for communications disruptions in emergency situations.¹⁵ FEMA noted that backup communications needs should be evaluated and identified amateur radio as one such option.¹⁶

Similarly, an August 2007 Working Paper prepared for the Department of Health and Human Services (HHS) noted the importance of amateur radio in emergency preparedness based on experience gained from Hurricane Katrina.¹⁷ According to the Working Paper:

Officials in Florida, Georgia, Louisiana and Mississippi all indicated that HAM radios were now a component of their preparedness plans and that public health personnel would be trained and certified to use the devices. One Georgia official said:

“Our new communication plan incorporates HAM operators – you have to plan for the worst. HAM operators will be in hospitals, emergency operations centers, one in each center. This is new in the plan. They are routinely in emergency operations but were not part of the plan before.”

...

¹³ *Ibid.* at 13.

¹⁴ *Ibid.*

¹⁵ Emergency Management Guide for Business and Industry: A Step-by-Step Approach to Emergency Planning, Response and Recovery for Companies of All Sizes (FEMA 141/Oct. 1993).

¹⁶ *Ibid.* at 31.

¹⁷ Working Paper: Enhancing Public Health Preparedness: Exercises, Exemplary Practices, and Lessons Learned, Phase III; Task G: Lessons Learned from the State and Local Public Health Response to Hurricane Katrina, WR-473-DHHS (RAND Health, Aug. 2007).

One overarching conclusion to be drawn from our findings on communications technologies is that a mix of redundant communications technologies seems to be the best approach to planning. While technologies such as satellite phones may be cost-prohibitive for some health departments, other less expensive technologies like HAM radios seem to be successful backup alternatives to cell phones and landlines.¹⁸

The HHS fiscal year (FY) 2010 Hospital Preparedness Program (HPP) Guidance¹⁹, which describes federal funding priorities for hospital emergency preparedness, addresses the importance of having a robust and redundant interoperable communication system in disasters, including the use of amateur radio operators:

Since FY03, the HPP has required that health care systems and health departments establish communications redundancy, ensuring that if one communications system fails, other technologies can be implemented in order to maintain communications. HHS encourages all participating health care systems and State Departments of Public Health to develop communications redundancy composed of the following:

- Landline and cellular Telephones
- Two-Way VHF/UHF Radio
- Satellite Telephone
- *Amateur (HAM) Radio*²⁰

The HPP also requires that state grant awardees develop and refine a multi-year exercise plan for conducting joint exercises to meet multiple requirements²¹, including testing the operational capability of interoperable communication systems.²²

Consistent with the widely recognized importance of amateur radio operations as a potential backup communications system for hospitals during emergencies, the primary hospital accreditation and certification bodies, including The Joint Commission, Det

¹⁸ *Ibid.* at 60-61.

¹⁹ Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response, Office of Preparedness and Emergency Operations, Division of National Healthcare Preparedness Program, FY10 Hospital Preparedness Program Guidance.

²⁰ *Ibid.* at 17

²¹ *Ibid.* at 13.

²² *Ibid.* at 14, 16.

Norske Veritas Healthcare Incorporated, the American Osteopathic Association and the Centers for Medicare & Medicaid Services, require hospitals to prepare emergency operations plans setting forth how a hospital will communicate during emergencies.²³ These certification and accreditation bodies require hospitals to establish backup communications processes and to test these systems on a regular basis.²⁴ Amateur radio has been identified as one potential backup technology in the event primary communications systems fail.²⁵

C. Petition for Rulemaking

On October 15, 2009, the Amateur Radio Policy Committee (ARPC) filed a Petition for Rulemaking urging the Commission to amend Section 97.113 to make clear that amateur radio operators can participate in emergency preparedness drills on behalf of their employers.²⁶ According to ARPC, amateur operators had participated in emergency preparedness drills for years – regardless of whether the drills were on behalf of an employer – based on their understanding that if the rules permitted amateur operators to engage in emergency communications during an actual emergency, they must be able to participate in emergency preparedness drills. However, “because of statements by the FCC legal staff” to various amateur operators that “licensed amateur employees of an emergency response organization, such as a hospital, may not participate in an emergency

²³ See, e.g., Joint Commission Standard EM.02.02.01.

²⁴ See, e.g., Joint Commission Standard EM.02.02.01, Rationale; Joint Commission Standard EM.03.01.03; Comments of American Health Care Association/National Center for Assisted Living, WP Docket No. 10-54 at 4-6 (submitted Apr. 2, 2010); Comments of Aspirus Wausau Hospital, WP Docket No. 10-54 at 3-5 (submitted Mar. 29, 2010); Comments of Banks-Jackson-Commerce Medical Center and Nursing Home Authority, WP Docket No. 10-54 at 3-5 (submitted Mar. 22, 2010); Comments of Cottage Hospital, WP Docket No. 10-54 at 3-5 (submitted Mar. 17, 2010); Comments of Hackettstown Regional Medical Center, WP Docket No. 10-54 at 3-5 (submitted Mar. 18, 2010).

²⁵ See Joint Commission Standard EM.02.02.01, Rationale.

²⁶ See Amateur Radio Policy Committee, Petition for Rulemaking, WP Docket No. 09-xx (filed Oct. 15, 2009) (ARPC Petition). This petition was incorporated by reference into the subject NPRM. See NPRM at n. 7.

drill,” ARPC sought a rule amendment to specifically authorize participation in such drills.²⁷ Expedited action on the Petition was requested.²⁸

D. Public Notice Undercuts Ability of Amateur Operators to Prepare for Emergency Situations

Five days after the ARPC Petition was filed, the Wireless Telecommunications Bureau, PSHSB, and Enforcement Bureau jointly issued a Public Notice stating that the Commission’s rules specifically prohibit amateur stations from transmitting communications “in which the station licensee or control operator has a pecuniary interest, *including communications on behalf of an employer.*”²⁹ Thus, the bureaus concluded that amateur operators that are hospital employees could not utilize their amateur stations in hospital emergency preparedness drills absent a rule waiver.³⁰ The Public Notice also established a process for obtaining waivers that would permit amateur radio operators to participate in drills on behalf of their employers.³¹

E. The AHA Blanket Waiver Request and Associated Record

On February 17, the AHA sought a blanket waiver to permit hospital employees who are amateur operators to participate in emergency preparedness drills on behalf of their employers.³² The Commission placed this request on public notice on March 3 and more than 300 parties submitted comments. The vast majority of commenters – more than two-thirds – supported granting of the request. Moreover, the request was uniformly supported by amateur radio operators that are affiliated with hospitals and by the vast

²⁷ ARPC Petition at 3-4.

²⁸ *Ibid.* at 8.

²⁹ Public Notice, 24 FCC Rcd 12872, DA 09-2259 (WTB/PSHSB/EB Oct. 20, 2009) (“Public Notice”)(emphasis added by Bureaus).

³⁰ *Ibid.*

³¹ *Ibid.*

³² Letter from Kristin L. Welsh, Vice President Strategic Initiatives and Business Community Liaison, AHA, to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, FCC (Feb. 17, 2010).

majority of amateur radio groups that participate in hospital training exercises.³³ As one commenter noted:

Amateur Radio has a long history of providing emergency communications. . . . [and] there is always a need for Amateur Radio as a back-up. While I would like to always be able to draw on volunteers as Amateur Radio Operators, Amateur Radio has been experiencing a steady decline and aging of its rank and file. . . . We are all aware of the passionate response HAMs exhibit in disasters or emergency situations, but hospitals and response agencies must conduct drills and exercises to prepare for these potential emergencies. . . . If paid staff are permitted to operate Amateur Radio in an emergency, then why not during drills and exercises? It is better to identify paid staff members that are also HAMs and permit them to train, than be forced to use unlicensed, untrained individuals in an emergency.³⁴

Another Amateur Radio group noted that it is preferable for a hospital employee that is a licensed amateur operator to conduct tests because, *inter alia*:

Limited numbers of licensed amateur radio operators in smaller communities must cover backup communications for several served agencies. The premise of restricting the availability of amateur operators who are employees of the served hospital tends to put an undue strain on the finite resource of amateur personnel.³⁵

F. Notice of Proposed Rulemaking (NPRM) Proposes to Amend Section 97.113 to Permit Amateur Operators to Participate in Emergency Preparedness Drills Even if Participation is on Behalf of Employer

On March 24, the Commission released the NPRM proposing to amend Section 97.113 to expressly permit amateur operators to participate in emergency preparedness

³³ See, e.g., Comments of Michael Dancey, WP Docket No. 10-54 at 1 (submitted Mar. 12, 2010); Comments of Larry D. Slemph, WP Docket No. 10-54 at 1 (submitted Mar. 26, 2010); Comments of Phillip Farris, WP Docket No. 10-54 at 1 (submitted Mar. 30, 2010); Comments of April Moell, WP Docket No. 10-54 at 1-3 (submitted Mar. 31, 2010); Comments of David McCarthy, WP Docket No. 10-54 at 1 (submitted Mar. 24, 2010).

³⁴ McCarthy Comments at 1.

³⁵ Comments of M. Richard Melcer, WP Docket No. 10-54 at 2 (submitted Mar. 29, 2010).

drills on behalf of their employers.³⁶ As discussed below, the AHA urges the Commission to amend Section 97.113 to permit an amateur radio operator to participate in emergency preparedness drills – whether sponsored by the government or not – even if participation would be on behalf of the operator’s employer.

II. AMATEUR RADIO OPERATORS SHOULD BE AUTHORIZED BY RULE TO PARTICIPATE IN EMERGENCY PREPAREDNESS DRILLS ON BEHALF OF THEIR EMPLOYERS, REGARDLESS OF DRILL SPONSORSHIP

Given the recognized importance of amateur radio in emergency situations, the AHA agrees with the Commission’s tentative conclusion that an amateur operator should not be precluded from participating in emergency preparedness drills merely because the operator is an employee of one of the organizations participating in the drill.³⁷ This is consistent with prior Commission findings that impediments to amateur radio use in emergency situations should be removed.³⁸

Such an approach also would be consistent with the record developed in response to the AHA’s waiver request. As that record made clear, hospital employees are already on site when an emergency or disaster strikes and, therefore, are “the first resource able to communicate with the outside world before the non-employee amateur operators are able to respond. . . .”³⁹ In some emergency situations, non-hospital employees may be unable to reach a hospital, such as, the hospital is in a quarantine area or access is blocked by disaster-related debris. It is therefore essential to allow hospital employees with amateur radio licenses to participate in disaster training. Moreover, allowing

³⁶ NPRM at ¶ 1.

³⁷ See NPRM at ¶ 5. The Commission also should clarify that amateur radio operators who are employees with emergency communication responsibilities may test equipment on a monthly basis to ensure that it is in working order without violating any FCC rules. See Appendix A, n.40.

³⁸ See *2006 Order* at ¶ 46.

³⁹ Comments of Franklin Rankin, WP Docket No. 10-54 at 1 (submitted Mar. 31, 2010).

amateur operators that are hospital employees (or employees of entities participating in a drill) to engage in emergency communications training is consistent with the Best Practices posted on the PSHSB’s website, HPP priorities and various standards adopted by hospital accreditation and certification bodies.

The rule, however, should not limit authorized participation to emergency preparedness drills sponsored by a government agency.⁴⁰ Hospitals participate in a wide range of drills – from drills fully planned, funded and conducted by a government agency, to those funded by a government agency but planned and carried out by the hospitals in a community, to drills entirely planned, funded and carried out by a single hospital. A requirement that limits participation to government sponsored drills would create ambiguity and needlessly limit amateur participation in emergency preparedness drills.

Among other things, the NPRM fails to define what constitutes a “government sponsored” drill, thus creating ambiguity for amateur operators whether they can participate in a particular drill, for example, for hospital accreditation purposes. It would not serve the public interest to adopt a rule that would require amateur operators to make individual determinations of whether a particular emergency drill qualifies as government sponsored and to face potential sanctions if their good-faith determinations are questioned after the fact. The risks of making the wrong determination would be a disincentive for hospitals to utilize employees who are amateur operators in their emergency preparedness plans and drills.

Regardless of whether or not the drill is government sponsored, the intent of carrying out drills is to improve the health care system’s emergency preparedness and

⁴⁰ See NPRM at ¶ 5.

response capability, thereby increasing public health, safety and well-being. The “government-sponsored” limit proposed by the Commission puts a barrier in the way of improved preparedness for emergencies and disasters by making it more difficult for hospitals and communities to test their redundant interoperable communications plans.

Further, in an era of shrinking budgets, there is no assurance that federal and state government funding will continue to be available for emergency preparedness,⁴¹ which may result in fewer drills that are clearly government sponsored. The better course would be to authorize amateur operators to participate in any emergency preparedness drills, regardless of the sponsor.

Thus, rather than adopt the rule proposed in the NPRM, the Commission should adopt the rule proposed by the American Radio Relay League (ARRL).⁴² It does not limit amateur radio authority for emergency preparedness exercises to government-sponsored drills. As ARRL noted in its comments in WP Docket No. 10-54:

[I]t is noted that AHA seeks to permit its member hospitals to utilize Amateur Radio operations as part of emergency preparedness drills, without limiting such to government-sponsored drills and exercises. ARRL believes it necessary to include in the waiver grant the ability to permit Amateur Radio licensee-employees of hospitals to participate in *bona fide* emergency communications drills and exercises, whether or not sponsored by a government entity. ARRL’s Amateur Radio Emergency Service (ARES) program, for example, sponsors at the State and local level periodic emergency communications drills and exercises, and there is no reason to differentiate between ARES drills and exercises and those sponsored by . . . [an] entity acting

⁴¹ See thenationshealth.aphapublications.org/content/39/1/1.1.full (noting that federal preparedness funding is down 25 percent since 2005).

⁴² See Comments of James T. Birdwell, WP Docket No. 10-54 at 1 (quoting final resolution of the ARRL Board of Directors); <http://n5fdl.com/davids-blog/2010/1/22/arrls-97113-wording.html> (same). APRC proposed a similar rule change to ensure amateur operators could participate in drills on behalf of an employer. See ARPC Petition at 2. The ARPC and ARRL proposals are set forth in Appendix A.

under the auspices of a State or local office of emergency services.⁴³

The AHA agrees with the ARRL in this regard and urges the Commission to eliminate any requirement that the authority of amateur radio operators to participate in drills be limited to those drills sponsored by the government.

CONCLUSION

Based on the foregoing, as well as the record compiled in WP Docket No. 10-54, the Commission should amend Section 97.113 to permit amateur radio operators to participate in any emergency preparedness drill, regardless of whether the amateur operator is an employee of a drill participant or whether the drill is government-sponsored.

Respectfully submitted,

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⁴³ ARRL Comments, WP Docket No. 10-54 at 8 (submitted Apr. 2, 2010).

APPENDIX A

PROPOSED RULE (Changes Underlined) – ARRL BOARD OF DIRECTORS RESOLUTION⁴⁴

§ 97.113 Prohibited Transmissions

(a) No amateur operator shall transmit:

* * *

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

PROPOSED RULE (Changes Underlined) – ARPC⁴⁵

§97.111 Authorized transmissions.

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

* * *

(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.

⁴⁴ See Comments of James T. Birdwell, WP Docket No. 10-54 at 1 (quoting final resolution of the ARRL Board of Directors). This proposed rule also makes clear that amateur radio operators can engage in the testing and maintenance of equipment used for emergency preparedness without running afoul of any FCC rule.

⁴⁵ ARPC Petition at 1-2. ARPC also proposed some conforming changes to Section 97.113. *Ibid.* at 2.