

“Communications on behalf of an employer” – a CQ Proposal

§97.113 Prohibited transmissions.

(a) No amateur station shall transmit:
 (3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer.

...

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

Over the past year or so, there has been quite a bit of confusion over exactly what constitutes appropriate and inappropriate use of amateur radio, particularly with regard to emergency communications and “communications on behalf of an employer.” It started after a ham who works for a hospital posted information on the internet about the ham station he had built there for emergency use and how he had used it effectively in a disaster drill. FCC Special Counsel Laura Smith e-mailed him that the provisions of Section 97.113(a)(3) of the FCC rules (see above) were very specific in prohibiting communications on behalf of an employer and made no exceptions for whether an employee was on the clock or regularly involved in providing communication services for the employer. In other words, his use of the station that he had built, as a hospital employee representing the hospital in a drill, was not permitted.

The fallout from this e-mail has been widespread and perhaps greater than anticipated. The goal—quite legitimately—is to prevent “served agencies,” those organizations for which hams provide volunteer public service and emergency communications, from taking advantage of us and our spectrum for their own internal use. Unfortunately, there have been growing reports of this happening in different parts of the country. But the net result of the FCC’s “no exceptions, no excuses” interpretation of this rule has been an abundance of caution, with emergency service agencies barring their employees who are licensed hams from participating in disaster drills to some agencies severing long-standing relationships with amateur radio groups in order to prevent any possibility of violating the law. It got to be so significant that the FCC adopted a “some exceptions, sometimes” policy, saying it would consider granting waivers on a case-by-case basis, but only for specific requests from government agencies and only for disaster drills.

Hams inquiring about the application of this rule have been told that if they disagree with the current interpretation, they should file a petition for rule mak-

ing to change it. At least one group so far, which includes CQ Contributing Editor Gordon West, WB6NOA, has done so. That petition asks the FCC to codify an exception to permit hams to participate in emergency and disaster communications and training “without regard to whether the amateur operator has related employment” (see Gordon’s “Op Ed” on this topic, on page 48 of this issue). This would, for example, permit National Weather Service meteorologists who are also hams (see this month’s “Public Service” column) to directly participate in SKYWARN communications and training when necessary.

We have no problem with this petition, but we feel that it does not go far enough to really solve the problem, because the problem extends beyond the narrow scope of emergency communications. This rule applies to all amateur communications, and broad application of this very strict interpretation could have far-reaching impact on the Amateur Radio Service in ways that the FCC perhaps did not anticipate.

For starters, employees of amateur radio publications could no longer conduct equipment reviews, since any transmissions made for the purpose of evaluating a piece of gear could be considered “communications on behalf of an employer” and would therefore be prohibited. Take it a step further and I should probably just sell my ham gear, since people have a tendency to recognize me on the air and occasionally make a comment regarding CQ. Any response other than rudely ignoring them could be considered “communication on behalf of an employer,” even if all I say is “call me or send an e-mail.”

The greatest impact could be on a program that is universally recognized as beneficial for everyone concerned—the Amateur Radio on the International Space Station (ARISS) program. NASA considers ARISS to be part of its educational outreach program, and it has helped countless young people worldwide to consider careers in science and technology. NASA astronauts participating in ARISS by making school contacts (during their personal time, on a voluntary basis) are clearly speaking in their roles as NASA astronauts and are therefore transmitting “communications on behalf of an employer.”

Since we do not believe that it is the FCC’s intent to shut down ARISS or prevent ham magazines from conducting equipment reviews, we have filed our own petition for rule making, seeking a broader clarification to the rule. Our proposal is to add the following to section 97.113:

(e) Communications on behalf of an employer may be transmitted on an occasional basis, provided that:

(1) Such communications are incidental to the

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employee's normal job responsibilities and are conducted voluntarily;

(2) Such communications are conducted during an employee's personal time, including but not limited to lunch hours, days off, and other non-compensated time periods; and

(3) The primary beneficiaries of such communications are other amateurs and/or members of the general public, and not the employer.

(4) Nothing in these rules shall be construed to limit the recreational use of an amateur station on an employer's premises by a duly licensed employee, as authorized by the station licensee.

Essentially, these are the guidelines that we have traditionally followed. We feel that this change would give hams the necessary flexibility to keep doing

what we have always done, while still protecting the Amateur Radio Service from being used inappropriately for purposes that would violate paragraph 5 of 97.113(a), as seen at the beginning of this column.

The ARRL Board of Directors will also be discussing this issue at its January meeting (which will have been held by the time you read this), and the League may file its own petition as well.

The only unacceptable option is to do nothing. The current confusion will only hurt amateur radio and its relationships with served agencies and other groups. The FCC needs to find a way to restore the balance that has been lost between providing amateurs with needed flexibility and protecting the service from being abused. Our

suggestion is but one possibility. More important than having any one petition adopted is having clear guidelines from the FCC.

Staff Additions

I'd like to close this month by welcoming two new people to our staff. Rich Arland, K7SZ, will be sharing the "Beginner's Corner" column with Wayne Yoshida, KH6WZ. Rich will be focusing on nitty-gritty new-ham topics, while Wayne will continue to write about activities that may be new to hams of any vintage. Plus, over on the business side of CQ Communications, we welcome Don Parrish, KA5OXN, who has joined our staff as Director of Marketing and New Business.

73, W2VU
