



Federal Communications Commission
Washington, D.C. 20554

November 5, 2012

DA 12-1772

Rolan O. Clark
5807 Adamstown Road
Adamstown, MD 21710-9614

Re: Petition for rule changes in 47 CFR Part 97.219, filed February 3, 2012

Dear Mr. Clark:

This is in response to the above-referenced petition for rulemaking that you filed on February 3, 2012 (Petition). You request that Section 97.219 of the Commission's Rules¹ be amended regarding the responsibility of control operators in message forwarding systems for retransmitted messages that violate the Commission's rules. Specifically, you propose that the phrase "except as noted in paragraph (d) of this section, for stations participating in a message forwarding system" be removed from Section 97.219(c)² and that Section 97.219(d)³ be removed.⁴ For the reasons set forth below, we dismiss the Petition.

Section 97.219(d) currently provides that, for amateur service stations participating in a message forwarding system, the control operator of the first forwarding station must either authenticate the identity of the station from which it accepts communications on behalf of the system or accept accountability for any violation of the Part 97 rules contained in messages it retransmits to the system.⁵ In your Petition, you state that you believe that the control operator of the first forwarding station in a message forwarding system "should have the same standing as [the control operator of a repeater that retransmits inadvertently communications that violate the rules] because the intent to accomplish communications consisting of text and/or voice communications is the same."⁶ You also state that Section 97.219(d) "is ambiguous as it gives no direction to the method and degree of processes and or procedures needed to define the degree of 'authenticate,'"⁷ and "implies that there would be a visually obtainable copy of the suspected violative transmission else it becomes hearsay."⁸ You propose to address these differences between a message forwarding system and a repeater by conforming Section 97.219 to Section 97.205(g).⁹ Specifically, you

¹ 47 C.F.R. § 97.219.

² 47 C.F.R. § 97.219(c).

³ 47 C.F.R. § 97.219(d).

⁴ See Petition at 1.

⁵ See 47 C.F.R. § 97.219(d).

⁶ See Petition at 2.

⁷ See *id.*

⁸ See *id.* at 3.

⁹ See *id.* at 3-4.

propose to require that the originator of a message that is entered into a message forwarding system be the only licensee responsible for the content of the message.¹⁰

In 1994, the Commission amended the amateur service rules to accommodate the operation of high speed message forwarding systems while retaining safeguards to prevent misuse.¹¹ It noted that the development of digital technology had resulted in thousands of amateur operators voluntarily linking their individually-licensed stations together to form easily-accessible high volume, high speed *ad hoc* message forwarding systems.¹² It also noted that, under the then-current Section 97.103(a) of the Rules¹³ each station licensee and control operator was accountable for the proper operation of the station which required, in effect, the control operator of every forwarding station to review each message for improper content prior to its retransmission.¹⁴ The Commission amended the rules to accommodate the amateur service community's desire to operate high speed message forwarding systems by adding Section 97.219, which provided that the control operators of intermediate forwarding stations, other than the first forwarding station, would not be held accountable when their stations retransmitted improper communications inadvertently.¹⁵ It noted that holding accountable the control operators of the first forwarding stations, but not control operators of intermediate forwarding stations, would facilitate high speed message forwarding yet retain a degree of protection against abuse.¹⁶ It also agreed with commenters that the accommodations for message forwarding systems should not apply to other operating activities such as repeaters and auxiliary stations,¹⁷ and it decided to leave questions regarding how to authenticate the identity of the originating station to the designers of the systems.¹⁸

The Commission considered comments arguing that the obligation of the control operator of the first forwarding station should be only to establish the identity of the station originating the message and that it was not necessary to hold any control operator of a forwarding station accountable for improper communications.¹⁹ It noted that because these systems can be an easy target for misuse by uncooperative operators and non-licensees, and it can be difficult to establish after the fact that a particular station originated a fleeting high speed digital transmission, there must be ongoing oversight of the system.²⁰

¹⁰ *See id.* at 4.

¹¹ *See* Amendment of Part 97 of the Commission's Rules Concerning Message Forwarding Systems in the Amateur Service, *Report and Order*, 9 FCC Rcd 1786 (1994) (*Report and Order*).

¹² *See id.* at 1786 ¶ 2.

¹³ *See* 47 C.F.R. § 97.103(a) (1994).

¹⁴ *See Report and Order*, 9 FCC Rcd at 1786 ¶ 3.

¹⁵ *See id.*

¹⁶ *See id.*

¹⁷ *See id.* at 1786 ¶ 3, 1787 ¶ 6.

¹⁸ *See id.* at 1787 ¶ 5.

¹⁹ *See id.* at 1786 ¶ 4.

²⁰ *See id.* at 1787 ¶ 5.

The Commission decided that the control operators of the first forwarding stations are in the best position to provide such oversight because they are the stations that accept, on behalf of the system, messages from originating stations.²¹ It declined to hold the control operator of the first forwarding station accountable for retransmitting improper communications, but rather, required that the licensee of the first forwarding station either authenticate the identity of the station from which it accepts communications on behalf of the system or accept accountability for the content of the message.²²

Thus, the Commission considered and rejected requirements such as you propose in your Petition when it adopted the message forwarding system rules in 1994. Your present Petition does not demonstrate or even suggest that any relevant circumstances have changed such as to merit reconsideration of this decision. Your current proposal does not demonstrate that revising this rule as requested would provide the ongoing oversight of message forwarding systems that must be present. To the contrary, your proposal asks for an accommodation for message forwarding systems that commenters said should not apply to these systems. Consequently, we conclude that it does not present grounds for the Commission to propose amending Section 97.219, and we dismiss the Petition.

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 303(r), and Section 1.401(e) of the Commission's Rules, 47 C.F.R. § 1.401(e), that the petition for rulemaking filed by Rolan O. Clark on February 3, 2012 IS DISMISSED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

²¹ *Id.*

²² *Id.*