

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

In the Matter of)
DON ROLPH) RM-11699
Petition for Rulemaking to Amend Part 97 of the
Commission's Rules Governing the Amateur Radio
Service to Provide for Encrypted Communications)

ORDER

Adopted: September 17, 2013

Released: September 18, 2013

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a petition filed by Don Rolph requesting a change to Section 97.113 of the Commission's Rules, which governs prohibited transmissions by amateur stations. Specifically, the petition requests that the Commission amend Section 97.113(a)(4) to provide an exception to the prohibition on encryption for emergency services operations or related training exercises. For the reasons set forth below, we dismiss the petition.

II. BACKGROUND

2. Section 97.113(a)(4) of the Commission's Rules prohibits amateur stations from transmitting, among other things, "messages encoded for the purpose of obscuring their meaning." Pursuant to the Middle Class Tax Relief and Job Creation Act of 2012, the Commission submitted a report to Congress in 2012 regarding the uses and capabilities of Amateur Radio Service communications in emergencies and disaster relief that identified impediments to enhanced Amateur Radio Service communications and made recommendations regarding the removal of such impediments. The report, prepared by the Commission's Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau (the Bureaus) in consultation with the Department of Homeland Security's Office of

1 See Petition for Rule Making (filed Mar. 28, 2013) (Petition).

2 47 C.F.R. § 97.113.

3 47 C.F.R. § 97.113(a)(4). The current form of this rule was adopted in 2006 to amend the amateur service rules to conform to the language of the international Radio Regulations. See Amendment of Part 97 of the Commission's Rules to Implement Certain World Radio Conference 2003 Final Acts, Order, 21 FCC Rcd 278 (WTB 2006); see also International Radio Regulations, Article 25, § 2 ("Transmissions between amateur stations of different countries shall not be encoded for the purpose of obscuring their meaning, except for control signals exchanges between earth command stations and space stations in the amateur-satellite service.").

4 See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6414 (2012).

5 See Uses and Capabilities of Amateur Radio Service Communications in Emergencies and Disaster Relief: Report to Congress Pursuant to Section 6414 of the Middle Class Tax Relief and Job Creation Act of 2012, Report, GN Docket No. 12-91, 27 FCC Rcd 10039 (WTB/PSHSB 2012) (Report).

Emergency Communications, noted that some commenters,⁶ including Mr. Rolph, “argue[d] that transmission of sensitive data, such as medical information that is subject to privacy requirements, is often a necessary aspect of emergency response, and therefore the use of encryption should be permitted under appropriate circumstances, such as by credentialed operators.”⁷ The report did not make any recommendation to Congress regarding the prohibition on encrypted amateur communications because the Bureaus concluded that any “Commission rules that may be an impediment to enhanced amateur service emergency communications can, as the [American Radio Relay League (ARRL)] notes, be considered through the Commission’s rulemaking process.”⁸

3. Carrying over from his comments in the report proceeding, Mr. Rolph filed the above-captioned petition requesting that the Commission amend Section 97.113(a)(4) to provide an exception to the prohibition on encryption for “intercommunications when participating in emergency services operations or related training exercises” involving sensitive data.⁹ He argues that “encryption cannot be effectively supported by the amateur service and this restriction has impacted the relationship of amateur radio volunteers and served agencies and significantly limited the effectiveness of amateurs in supporting emergency communications.”¹⁰ He also states that “agencies served by amateur radio communication during emergencies perceive the following: that encryption of certain emergency data is required . . . ; that certain emergency information is required for tactical purposes to be encrypted . . . ; and that for national security reasons certain emergency communications should be encrypted.”¹¹ Mr. Rolph argues that amending the rule as proposed would “enhanc[e] the amateur radio community’s ability to effectively coordinate with served organizations and . . . support of emergency communications.”¹² The petition received over three hundred comments, twice as many of which oppose the petition as support it.

III. DISCUSSION

4. Based on our review of the record, we are not persuaded that the petition discloses sufficient reasons in support of the action requested. First, we conclude that the record does not support Mr. Rolph’s assertion that the prohibition on encrypted amateur communications is impairing the ability of the amateur radio community to provide effective support to public safety agencies during emergencies. As the report to Congress concluded,

The amateur radio community and the emergency response and disaster communications communities all agree that amateur radio can be of great value in emergency response situations. Amateur radio carries with it a wide range of advantages that allow it to supplement other emergency communications activities during disasters. This has been demonstrated time and again in a wide variety of emergency and disaster situations.¹³

⁶ The Bureaus issued a *Public Notice* seeking comments on whether there were any such impediments, specifically asking if any Commission rules create such impediments and what actions could be taken to minimize the effect of those rules. See Commission Seeks Comment on Emergency Communications by Amateur Radio and Impediments to Amateur Radio Communications, *Public Notice*, GN Docket No. 12-91, 27 FCC Rcd 3200 (WTB/PSHSB 2012).

⁷ See *Report*, 27 FCC Rcd at 10050 ¶ 37.

⁸ See *id.* at 10051 ¶ 40 (citing ARRL Comments [in GN Docket No. 12-91] at 44).

⁹ See Petition at 4.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.* at 3.

¹³ *Report*, 27 FCC Rcd at 10052-53 ¶ 41.

The report recited numerous examples of amateur radio service communications in emergencies and disaster relief, none of which appear to have been impaired by the prohibition on encryption.¹⁴ The Bureaus emphasized that “[a]mateur radio operators have been useful in recent years in augmenting essential communication services and providing communications links when normal communication systems are overloaded or unavailable,” but are not intended to supplant or replace dedicated public safety communications channels.¹⁵

5. In this proceeding, ARRL argues that there is no “basis for assuming that encryption of transmissions in order to obscure their meaning is necessary in order to continue and enhance the utility of amateur radio emergency and disaster relief communications,” stating that it is unaware of any emergency or disaster response agency that is unwilling or reluctant to use amateur radio as part of their communications plan due to amateur stations not being able to transmit encoded or obscured messages.¹⁶ Finally, we note that almost no public safety agencies filed comments in support of the petition.¹⁷

6. As the Commission has noted, Section 97.113 is intended to help maintain the non-commercial character of the amateur radio service by prohibiting certain types of transmissions.¹⁸ The primary protection against exploitation of the amateur service and the enforcement mechanism in the amateur service is its self-regulating character.¹⁹ As noted by numerous commenters, the amateur community has a long tradition of self-regulation and a strong commitment to maintaining the unclouded distinction between the amateur service and other radio services.²⁰ To ensure that the amateur service remains a non-commercial service and self-regulates, amateur stations must be capable of understanding the communications of other amateur stations.²¹ The content of messages that are encoded, however, are known only to those stations that have the code used to encode the message. In the case of encrypted

¹⁴ See *id.* at 10041-45 ¶¶ 6-16.

¹⁵ *Id.* at 10039-40 ¶ 1; see also, e.g., *id.* at 10043 ¶ 11 (“Public safety organizations stress the importance of amateur radio as a complement to other forms of emergency communications. . . . Commenters note that amateur radio operators may be quickly deployed to areas where additional communications are needed to ‘supplement existing local government and commercial land mobile networks’”) (quoting Arlington County, Virginia, Office of Emergency Management Comments at 2).

¹⁶ ARRL Comments at 1-2; but see, e.g., Jon Perelstein Comments at 1 (stating that discussions regarding local amateurs providing back-up communications for the city’s hospital “have broken down over the issue of encryption”).

¹⁷ The only government official who appears to have commented in his or her professional capacity is the State of Illinois Statewide Interoperability Coordinator. See Joe Galvin Comments at 1.

¹⁸ See Amendment of Part 97 of the Commission’s Rules to Relax Restrictions on the Scope of Permissible Communications in the Amateur Service, *Notice of Proposed Rule Making*, PR Docket No. 92-136, 7 FCC Rcd 4231, 4231 ¶ 3 (1992) (*Amateur Scope NPRM*). Section 97.113 prohibits amateur stations from transmitting, among other things, any communications for material compensation or in which the licensee or control operator has a pecuniary interest; communications, on a regular basis, which could reasonably be furnished alternatively through other radio services; broadcasting; and retransmission of signals from most other types of stations.

¹⁹ We note that a hallmark of enforcement in the amateur service is “self-policing,” which depends on an amateur station hearing a message being able to determine whether message violate the amateur service rules. See, e.g., Waiver of Sections 97.80(b) and 97.114(b)(4) of the Amateur Rules to Permit the Retransmission of Third-Party Traffic in Certain Situations, *Order*, PR Docket No. 85-105, 59 Rad. Reg. (P & F) 1326, 1326 ¶ 2 (PRB 1986).

²⁰ See, e.g., Morgan Frank Benner Comments at 1; see also *Amateur Scope NPRM*, 7 FCC Rcd at 4232 ¶ 8.

²¹ See, e.g., Bruce Perens Comments at 11-12.

messages, the message content is known only to stations having the encryption algorithm or key.

7. Thus, while the proposal could advance one purpose of the amateur radio service – value to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications²² – it would undermine other characteristics and purposes of the service.²³ Therefore, we agree with the comments that say, in various ways, that amending the rules to allow encryption to obscure the meaning of messages transmitted during emergency services operations and related training exercises would not improve or enhance the operation of amateur service stations or otherwise be in the public interest.²⁴ Accordingly, we dismiss the petition.

IV. ORDERING CLAUSES

8. On the basis of the above, we conclude that the request in the above-captioned petition for rulemaking does not warrant further consideration at this time.

9. 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 Don Rolph, RM-11699, on March 28, 2013 IS DISMISSED WITHOUT PREJUDICE.

10. 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, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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²² See 47 C.F.R. § 97.1(a). We note, however, that many commenters believe that permitting encryption would actually hinder amateur emergency service by rendering communications non-interoperable. See, e.g., Joe Hedman Comments at 1-2.

²³ See also, e.g., Geoffrey T. Dairiki Comments at 1 (expressing concern that another purpose of the amateur service – enhancing international goodwill, see 47 C.F.R. § 97.1(e) – could be undermined if foreign administrations curtail amateur operations rather than tolerate encrypted communications).

²⁴ See Amendment of Parts 2 and 97 of the Commission's Rules Governing the Amateur Service to Authorize Operation on Additional Frequency Bands in American Samoa, *Order*, 14 FCC Rcd 20595, 20600 ¶ 9 (WTB PSPWD 1999) (“[I]f the control operator of an amateur service station, who also is an emergency services provider engaged in disaster relief, questions whether a particular message in support of disaster relief should be transmitted on amateur service frequencies, he or she is under no obligation to transmit the message. If the control operator decides that a particular message is not appropriate for transmission on amateur service frequencies, we note that the message can be transmitted on frequencies allocated to other radio services, because disaster relief organizations are eligible for and have been assigned numerous radio channels in other radio services to meet their communication needs.”).