



Federal Communications Commission
Washington, D.C. 20554

October 3, 2019

DA 19-997

Jerry Oxendine
2007 E. Lee Street
Gastonia, NC 28054

Dear Mr. Oxendine:

This letter responds to your petition for declaratory ruling or, alternatively, rulemaking, dated January 10, 2018.¹ You request a determination that state and local laws that prohibit talking on handheld communications devices while driving are preempted by federal law to the extent that they apply to devices other than commercial mobile radio service subscriber units interconnected to the public switched telephone network, such as part 90 private land mobile radios, part 95 Citizens Band (CB) radios, and part 97 amateur radios (collectively referred to herein as “two-way radios”). For the reasons set forth below, we deny the petition.

Our research indicates that over a third of states have enacted distracted driving laws that prohibit drivers from talking on a handheld communications device while the vehicle is in motion, and only about half of them exempt any two-way radios. You assert that state and local laws prohibiting use of handheld two-way radios while driving conflict with the federal interest in supporting mobile communications, particularly in the amateur service.²

We acknowledge that there is a strong federal interest in promoting amateur communications and that the amateur service is regulated extensively under part 97 of the Commission's rules.³ But we find no basis for preempting the distracted driving laws that you describe. State and local laws may be preempted if: (1) Congress does so expressly; (2) Congress, through legislation, clearly indicates its intent to occupy the field of regulation, leaving “no room for the States to supplement;”⁴ or (3) the laws “actually conflict[.]” with federal law, such that “compliance with both federal and state regulations is a physical impossibility” or they “stand[.] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”⁵ None of these applies here.

Laws that prohibit talking on handheld communications devices while driving do not preclude or unreasonably obstruct mobile use of handheld two-way radios. These laws apply to the use of *handheld* devices *while driving*. A driver can comply with these laws by using a hands-free attachment or by

¹ Letter from Jerry Oxendine to Federal Communications Commission, RM-11833 (Jan. 10, 2018, received Jan. 16, 2018) (Petition). The Petition went on public notice on March 29, 2019. See *Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Public Notice, Rep. No. 3121 (CGB Mar. 29, 2019). Approximately twenty parties filed comments supporting the Petition.

² See Petition at 2-3.

³ See *Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities*, Memorandum Opinion and Order, 101 F.C.C.2d 952, 959–60, para. 24 (1985) (*PRB-1*); *Federal Preemption of State and Local Laws Concerning Local Laws Concerning Amateur Operator Use of Transceivers Capable of Reception Beyond Amateur Service Frequency Allocations*, Memorandum Opinion and Order, 8 FCC Rcd 6413, 6415-16, para. 10 (1993) (*Amateur Scanner Order*).

⁴ *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699–705 (1984) (*Capital Cities Cable*).

⁵ *Fidelity Fed. Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982) (quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963); *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); see *Capital Cities Cable*, 467 U.S. at 705–09.

parking the vehicle prior to using a handheld device, both of which are contemplated by our rules regarding two-way radios.⁶ Consequently, the record before us does not demonstrate that state and local laws that prohibit talking on handheld devices while driving stand as an obstacle to amateur communications or actually conflict with federal law in any way.⁷ Nor is there any express preemption or argument that Congress has “occupied the field.” We therefore deny your petition.

Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.2 of the Commission’s rules, 47 CFR § 1.2, the petition for a declaratory ruling filed on January 16, 2018, by Jerry Oxendine IS DENIED.

This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁶ See *Review of the Commission’s Part 95 Personal Radio Service Rules*, Report and Order, 32 FCC Rcd 4292, 4317-18, paras. 63-64 (2017) (amending the CB rules to permit hands-free headsets); 47 CFR §§ 90.7, 95.303 (both defining mobile station as a station “intended to be used while in motion or during halts at unspecified points”).

⁷ These laws do not impose the kind of constraint as was at issue in the cases in which the Commission preempted laws that precluded or severely restricted amateur radio operations. See *PRB-1*, 101 F.C.C.2d at 960, para. 25 (preempting state and local regulations governing amateur station antennas and support structures that preclude amateur service communications); *Amateur Scanner Order*, 8 FCC Rcd at 6416, para. 11 (preempting state and local laws prohibiting the possession of amateur transceivers that can receive public safety, special emergency, or other radio service frequencies).