

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

PR Docket No. 88-139

In the Matter of

Reorganization and Deregulation
of Part 97 of the Rules Governing
the Amateur Radio Services.

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 1990;

Released: July 20, 1990

By the Commission:

I. BACKGROUND

1. On May 31, 1989, we adopted a *Report and Order* in this proceeding¹ that, *inter alia*, reorganized the amateur service rules and codified existing policies. The purpose of the reorganization was to create a regulatory environment that would encourage modern techniques, technology, and uses of amateur radio. Three petitions seeking reconsideration of various aspects of our action have been filed.²

II. PETITIONS

2. RTNDA seeks reconsideration of Section 97.113(c) of the Commission's Rules, 47 C.F.R. § 97.113(c). RTNDA requests that the Commission create an exception to the rule that amateur service stations may not engage in any form of broadcasting. The substitute rule would permit amateur stations to transmit communications to convey news information for dissemination to the public, if the information is directly related to an important news event and the information cannot be transmitted by other means because other voice communication systems have been disrupted or are not available at the information origination point. Alternatively, RTNDA requests that the immediacy condition in the safety of life or protection of property exception in Section 97.113(c)(1) be eliminated as a criterion for determining whether amateur service frequencies can be used to transmit communications to convey information for dissemination to the public. The RTNDA argues that retention of the immediacy requirement effectively prohibits news coverage that the Commission should encourage in the aftermath of a hurricane, tornado, or plane crash. According to RTNDA, even though the immediate threat to life or property no longer exists in the wake of a catastrophe, there is still an absence of other communications facilities to report the devastation or loss of life that has occurred. On August 21, 1989, the American Radio Relay League, Inc. (ARRL) filed an opposition to RTNDA's petition for reconsideration, asking that it be denied. The ARRL argues that amateur stations are not available for newsgathering or program production purposes. Further, it contends that reports concerning the aftermath of disasters, after safety

of life and protection of property is assured, can be transmitted on frequencies available for broadcasting under Part 74 of the Commission's Rules.

3. Popkin requests that various rules that were adopted by the Commission in this proceeding be amended, including changes to reflect contemporary United States Postal Service terminology and licensing procedures. He also suggests some language changes in the interest of clarifying the rules.

4. Pagel requests that Section 97.303(b) of the Commission's Rules, 97 C.F.R. § 303(b), be amended to show that as of January 1, 1990, the amateur service is the primary user of the 1.25 meter band.

III. DISCUSSION

5. With respect to RTNDA's request for reconsideration, we are not persuaded that we should adopt either RTNDA's substitute rule or eliminate the immediacy factor from the current rule. Conveying information to the public about an important news event does not fall within the purposes of the amateur service.³ In our view, the substitute rule offered by RTNDA would permit newsgathering. In this connection, the ARRL, in opposing the petition for reconsideration states:

The term "important news event" in this connection is subject to broad and varied interpretation, as is the term "information directly related to." The RTNDA group does not specify what is considered an "important news event" or who would decide whether an event is important. Presumably, the news director of a broadcast station would make that distinction. To a news director, any news item is by definition an "important news event." In any event, his determination could hardly be determined to be a dispassionate analysis, since it is his job to "get the story on the air."⁴

6. We believe that any news information that is conveyed to the public using amateur service frequencies must involve the imminent safety of an individual or the imminent protection of property.⁵ It is the immediate danger to the public that activates the exception. The immediacy requirement in the rule limits the exception to an extraordinary situation, such as a specific toxic material spill, a major earthquake, or unexpected flooding. It prevents the exception from being misapplied in instances that are not time-sensitive, for example, apprehension that society is generally endangered by rampant crime, environmental pollution, or highway traffic. Where there is no immediate danger, therefore, the communications should not be transmitted over amateur service frequencies. To hold otherwise could easily lead to a conversion of the amateur service to commercial or broadcasting purposes. We simply believe that allowing the amateur service frequencies to be used for broadcasting purposes would not be consistent with the purpose of the amateur service and the way it functions.⁶ We decline, therefore, to adopt RTNDA's substitute rule or to eliminate the word "immediate" in the two places where it occurs in the current rule.

7. In Section 97.19(b) of the Commission's Rules, 47 C.F.R. § 97.19(b), Popkin requests that the rule indicate that it is not necessary to obtain a replacement license for

a lost, destroyed, or mutilated license when filing for a modification or renewal of the license. This is consistent with our current practice and the rule section has been clarified as requested. In accordance with the petitioner's request, we have conformed the postal terms in Section 97.21 of the Commission's Rules, 47 C.F.R. § 97.21, to conform to the current usage of the United States Postal Service. In Section 97.119(b)(3) of the Commission's Rules, 47 C.F.R. § 97.119(b)(3), the petitioner requests that the word "VHF" be eliminated. The requested deletion has already been made.⁷ We have also corrected a minor error in the last sentence of Section 97.119(c). In paragraph (c), the word "by" is corrected to read "with." In Section 97.301 of the Commission's Rules, 47 C.F.R. § 97.301, the petitioner suggests that, in the interest of clarification, the words "other than the FCC" be added after the words "United States government agency." The additional words would emphasize that the transmitting frequency bands specified in the rule are not available wherever the amateur service is regulated by any authority other than the Commission. The introductory text of this rule has been reworded to reflect the essence of the petitioner's suggestion.

8. Although not all of Popkin's requested amendments are discussed in detail, each suggestion has been carefully reviewed. Certain changes suggested by the petitioner, such as requiring the use of the optional nine digit zip code, were not adopted because persuasive reasons for their adoption were not given. The suggestion to permit the manual retransmission of time signals and weather information involves a substantive change that is beyond the scope of this proceeding.

9. With respect to frequency sharing of the 1.25 meter band between the amateur service and the Government radiolocation service, the amendment requested by Mr. Pagel is premature because the elimination of amateur use of the 1.25 meter band will not be implemented in the amateur service rules until the current land mobile proceeding concerning the 1.25 meter band is completed.⁸

10. We have also included in this *Memorandum Opinion and Order* certain technical amendments to Section 97.305 of the Commission's Rules, 47 C.F.R. § 97.305. These amendments are necessary to correct typographical errors in the Federal Register.

IV. PROCEDURAL MATTERS

11. In accordance with Section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605, the Commission certifies that the rules adopted herein will not have a significant impact on a substantial number of small business entities because these entities may not use the amateur radio service for commercial radio communication. See 47 C.F.R. § 97.3(a)(4).

12. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

V. CONCLUSION

13. In view of the foregoing, and pursuant to the authority contained in 47 U.S.C. § 154(i), IT IS ORDERED that the petitions for reconsideration filed by The Radio-Television News Directors Association, *et al.* and Karl Pagel ARE DENIED, and that the petition for reconsideration filed by David Popkin IS GRANTED as indicated herein and IS DENIED in all other respects.

14. IT IS FURTHER ORDERED, pursuant to the authority contained in 47 U.S.C. § 303(r), that Part 97 is amended as set forth in the Appendix below.

15. IT IS FURTHER ORDERED that the rule amendments shall become effective September 10, 1990.

16. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064 - 1068, 1081 - 1105, as amended; 47 U.S.C. §§ 151 - 155, 301 - 609, unless otherwise noted.

2. Section 97.19(b) is revised to read as follows:

§ 97.19 Application for a renewed or modified license.

* * * * *

(b) Each application for a renewed or modified amateur service license must be accompanied by a photocopy of the license document or the original document, unless it has been lost, mutilated, or destroyed. Each application for a modified operator license involving a change in operator class must be submitted to the VEs administering the qualifying examination. All other applications must be submitted to: FCC, P. O. Box 1020, Gettysburg, PA 17326.

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3. The last sentence of Section 97.21 is revised to read as follows:

§ 97.21 Mailing address and station location.

* * * (A post office box, rural delivery service number, or general delivery is unsuitable as a station location).

4. Section 97.119(c) is revised to read as follows:

§ 97.119 Station identification.

(c) An indicator may be included with the call sign. It must be separated from the call sign by the slant mark or by any suitable word that denotes the slant mark. If the indicator is self-assigned, it must be included after the call sign and must not conflict with any other indicator specified by the FCC Rules or with any prefix assigned to another country.

5. The introductory paragraph of Section 97.301 is revised to read as follows:

§ 97.301 Authorized frequency bands.

The following transmitting frequency bands are available to an amateur station located within 50 km of the Earth's surface, within the specified ITU Region, and outside any area where the amateur service is regulated by any authority other than the FCC.

6. In the table in § 97.305(c), after the entries for the HF wavelength band, revise the VHF entries and add the UHF entries to read as follows:

§ 97.305 Authorized emission types.

(c) A station may transmit the following emission types on the frequencies indicated, as authorized to the control operator, subject to the standards specified in § 97.307(f) of this Part.

Wavelength band	Frequencies	Emission types authorized	Standards <i>see</i> § 97.307(f), paragraph:
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VHF:

6 m	50.1-51.0 MHz	MCW, phone, image, RTTY, data	(2), (5).
-do-	51.0-54.0 MHz	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
2 m	144.1-148.0 MHz	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
1.25 m	Entire band	MCW, phone, image, RTTY, data, test	(2), (6), and (8).

UHF:

70 cm	Entire band	MCW, phone, RTTY, data, SS, test	(6), (8)
33 cm	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12)
23 cm	Entire band	MCW, phone, image, RTTY, data, SS, test	(7), (8), and (12)
13 cm	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12)

FOOTNOTES

¹ See 4 FCC Rcd 4719 (1989).

² The petitioners are: Karl Victor Pagel (Pagel), David B. Popkin (Popkin), and Radio-Television News Directors Association, *et al.* (RTNDA).

³ See Section 97.1 of the Commission's Rules, 47 C.F.R. § 97.1.

⁴ Opposition to Petition for Reconsideration of ARRL at 9.

⁵ Section 705 of the Communications Act of 1934, as amended, 47 U.S.C. § 605, excludes amateur radio communications from the privacy protections. Journalists, therefore, may listen to such communications and use the information conveyed therein as they wish. There is usually a plethora of such communications during a disaster because amateur stations are usually heavily involved in providing emergency communications.

⁶ See 44 Fed. Reg. 20465 (1979). See also 50 Fed. Reg. 25241 (1985).

⁷ See *Errata*, 4 FCC Rcd 6750 (1989).

⁸ Amateur stations may continue to transmit in the 220-222 MHz segment of the 1.25 m band until such time as private land mobile and Government users are allowed access. The Commission, however, encourages amateur operators to begin an orderly transition of on-going operations from the 220-222 MHz segment to other amateur service frequencies to avoid an abrupt termination when the land mobile service rules are completed. *Report and Order*, 3 FCC Rcd 5287 (1988), and *Memorandum Opinion and Order*, 4 FCC Rcd 6407 (1989).