

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

In the Matter of)
Amendment of Part 97 of the Commission's Rules) WP Docket No. 10-72
Regarding Amateur Radio Service)
Communications During Government Disaster)
Drills)
Amateur Radio Policy Committee Petition for)
Rulemaking)
Request by American) WP Docket No. 10-54
Hospital Association for Blanket Waiver to)
Permit Hospitals to Use Amateur Radio as Part of)
Emergency Preparedness Drills)

REPORT AND ORDER

Adopted: July 14, 2010

Released: July 14, 2010

By the Commission:

TABLE OF CONTENTS

I. INTRODUCTION 1
II. BACKGROUND 3
III. DISCUSSION 8
IV. PROCEDURAL MATTERS 22
A. Final Regulatory Flexibility Certification 22
B. Paperwork Reduction Act Analysis 24
C. Congressional Review Act 25
V. ORDERING CLAUSES 26
APPENDIX A – List of Commenters
APPENDIX B – Final Rules

I. INTRODUCTION

1. In this Report and Order, we amend the Commission's amateur radio service rules.1 Specifically, we amend the rules to permit amateur radio operators to transmit messages, under certain limited circumstances, during either government-sponsored or non-government sponsored emergency and disaster preparedness drills, regardless of whether the operators are employees of entities participating in

1 See 47 C.F.R. Part 97.

the drill. Although public safety land mobile radio systems are the primary means of radio-based communications for emergency responders, experience has shown that amateur radio has played an important role in preparation for, during, and in the aftermath of, natural and man-made emergencies and disasters.

2. Current rules provide for amateur radio use during emergencies.² At the same time, the rules prohibit communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer.³ While there are some exceptions to this prohibition, there is none that would permit amateur station control operators who are employees of public safety agencies and other entities, such as hospitals, to participate in drills, tests and exercises in preparation for such emergency situations and transmit messages on behalf of their employers during such drills and tests.⁴ Accordingly, we amend our rules to provide that, under certain limited conditions, amateur radio operators may transmit messages during emergency and disaster preparedness drills and exercises, limited to the duration of such drills and exercises, regardless of whether the operators are employees of entities participating in the drills or exercises.

II. BACKGROUND

3. One of the fundamental principles underlying the amateur radio service is the “[r]ecognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.”⁵ Further, the rules state that “[n]o provision of these rules prevents the use by an amateur station of any means of radio communication at its disposal to provide essential communication needs in connection with the immediate safety of human life and immediate protection of property when normal communication systems are not available.”⁶ Indeed, amateur radio operators provide essential communications links and facilitate relief actions in disaster situations. While land mobile radio services are the primary means of conducting emergency communications, amateur radio plays a unique and critical role when these primary facilities are damaged, overloaded, or destroyed.⁷ For example, during Hurricane Katrina, amateur radio operators volunteered to support many agencies, such as the Federal Emergency Management Agency, the National Weather Service, and the American Red Cross. Amateur radio stations provided urgently needed wireless communications in many locations where there were no

² See 47 C.F.R. §§ 97.401, *et seq.*

³ 47 C.F.R. § 97.113(a)(3).

⁴ In this regard, Bureau staff recently issued a Public Notice providing guidance for requesting waiver relief to facilitate government-sponsored emergency preparedness and disaster drills. See Amateur Service Communications During Government Disaster Drills, *Public Notice*, 24 FCC Rcd 12872 (WTB, PSHSB, EB 2009) (*Disaster Drills Public Notice*). The waiver process outlined in this Public Notice remained available throughout this rulemaking proceeding.

⁵ 47 C.F.R. § 97.1(a).

⁶ 47 C.F.R. § 97.403.

⁷ See Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Order*, EB Docket No. 06-119; WC Docket No. 06-63, 22 FCC Rcd 10541, 10576 ¶ 111 (2007) (noting that the amateur radio community played an important role in the aftermath of Hurricane Katrina and other disasters).

other means of communicating and also provided other technical aid to the communities affected by Hurricane Katrina.⁸

4. Since amateur radio is often an essential element of emergency preparedness and response, many state and local governments, public safety agencies, and hospitals incorporate amateur radio operators and the communication capabilities of the amateur service into their emergency planning. In this regard, some entities, such as hospitals, emergency operations centers, and police, fire, and emergency medical service stations, have emphasized the participation of their employees who are amateur station operators in emergency and disaster drills and tests. For example, a representative of the New Orleans Urban Area Security Initiative recently emphasized the importance of conducting emergency drills and the need for amateur participation.⁹

5. The Commission's rules expressly permit operation of amateur stations for public service communications during emergencies, and on a voluntary basis during drills and exercises in preparation for such emergencies. Given, however, that the Amateur Radio Service is primarily designated for "amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest,"¹⁰ the rules expressly prohibit amateur stations from transmitting communications "in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer."¹¹ Accordingly, public safety and public health entities seeking to have employees operate amateur stations during government-sponsored emergency preparedness and disaster drills presently must request a waiver.¹² In this connection, Commission staff has granted several waivers on a case-by case basis.¹³

⁸ See Letter from Kenneth Hughes, Communications Planner, New Orleans Region Urban Area Security Initiative, to Jamie A. Barnett, Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, dated November 13, 2009, WP Docket No. 10-72 (*Hughes Letter*) (noting that although Hurricane Katrina rendered local land mobile radio systems inoperative, amateur radios became the "only functioning life-line within the greater New Orleans area," for example by use at hospitals to "arrange for emergency airlifts for critical patients").

⁹ See *Hughes Letter* at 1 (citing to the "importance of having amateur radio operators not only available during emergencies, but intimately engaged in establishing governance and other standard operating procedures, and, most importantly, in training and exercises, all in accordance with the National Emergency Communications Plan"). We are also in receipt of a related Petition for Rulemaking submitted by the Amateur Radio Policy Committee (ARPC). See Petition for Rule Making, WP Docket No. 10-72 (filed Oct. 15, 2009) (seeking to amend the rules to permit amateur transmissions "necessary for disaster relief or emergency response, including training exercises, planning, drills or tests, without regard to whether the amateur operator has related employment, where the transmissions are for the exclusive use of amateur radio operators for noncommercial purposes"). We have incorporated the ARPC Petition into the docket of this proceeding.

¹⁰ See 47 C.F.R. § 97.3(a)(4).

¹¹ See 47 C.F.R. § 97.113(a)(3). The prohibition was adopted in its current form in 1993. See Amendment of Part 97 of the Commission's Rules to Relax Restrictions on the Scope of Permissible Communications in the Amateur Service, *Report and Order*, PR Docket No. 92-136, 8 FCC Rcd 5072 (1993).

¹² See *Disaster Drills Public Notice*.

¹³ See, e.g., Letters from Deputy Chief, Mobility Division, Wireless Telecommunications Bureau granting waiver requests: Letter to Annie Robinson, Mendocino County HHS/CHS, DA 10-1004 (June 2, 2010); Letter to Gregory Williams, Director, Monroe County Office of Emergency Management, DA 10-1003 (June 2, 2010); Letter to Frederick A. Zacher, DeWitt County Emergency Services and Disaster Agency, DA 09-2420 (Nov. 16, 2009); Letter to Matt May, Assistant Director, Johnson County Emergency Management Agency, DA 09-2332 (Oct. 28, 2009); Letter to Robert L. Stephens, Kentucky Department of Military Affairs, DA 09-2302 (Oct. 27, 2009).

6. On February 17, 2010, the American Hospital Association (AHA) filed a request for a blanket waiver of Section 97.113(a)(3) of the Commission's rules to permit hospitals seeking accreditation to use amateur radio operators who are hospital employees to transmit communications on behalf of the hospital as part of emergency preparedness drills.¹⁴ On March 3, 2010, the Wireless Telecommunications and Public Safety and Homeland Security Bureaus jointly issued a Public Notice seeking comment on the foregoing request.¹⁵

7. On March 18, 2010, we adopted a *Notice of Proposed Rulemaking (NPRM)* seeking comment on whether to amend the rules to permit amateur radio operators to participate in government-sponsored emergency and disaster preparedness drills and tests, regardless of whether the operators are employees of the entities participating in the drill or test.¹⁶ We also invited comment on whether there were circumstances in which amateur operators should be allowed to participate on their employer's behalf in non-government-sponsored tests or drills.¹⁷ Comments were due May 24, 2010, and reply comments were due June 7, 2010.

III. DISCUSSION

8. *Government-sponsored Emergency Drills.* In the *NPRM*, we tentatively concluded to permit amateur radio operators to participate in government-sponsored emergency and disaster preparedness drills and tests, regardless of whether the operators are employees of the entities participating in the drill or test.¹⁸ In reaching this tentative conclusion, we stated that employee status should not preclude or prevent participation in government-sponsored emergency and disaster tests and drills.¹⁹ We also tentatively concluded that extending authority to operate amateur stations during such drills will enhance emergency preparedness and thus serve the public interest.²⁰

9. In response to the *NPRM*, public safety agencies and other emergency first responder entities voiced general support for the proposal.²¹ These commenters note that public safety agencies frequently incorporate amateur radio and indeed are encouraged to do so as a part of Commission

¹⁴ Letter dated Feb. 17, 2010 from Kristin L. Welsh, Vice President for Strategic Initiatives and Business Community Liaison, AHA, to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, FCC (*AHA Petition*).

¹⁵ Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on Request by American Hospital Association for Blanket Waiver to Permit Hospitals to Use Amateur Radio as Part of Emergency Preparedness Drills, WP Docket No. 10-54, *Public Notice*, 25 FCC Rcd 3441 (WTB, PSHSB 2010).

¹⁶ Amendment of Part 97 of the Commission's Rules Regarding Amateur Radio Service Communications During Government Disaster Drills, WP Docket No. 10-72, *Notice of Proposed Rulemaking*, 25 FCC Rcd 3441 (2010) (*NPRM*).

¹⁷ *NPRM* at ¶ 7.

¹⁸ *Id.* at ¶ 5.

¹⁹ *Id.*

²⁰ *Id.*

²¹ CPSRA Comments at 2, CEMA Comments at 1, MEMA Comments at 1-4, Los Angeles Comments at 1-2, Arlington County, Virginia Comments at 5, SVRIP Comments at 1, Daytona Comments at 2, HAP Comments at 5-7, Seattle Reply Comments at 2-4, NPSTCI Comments at 6.

policy.²² Several amateur groups and clubs also support the rule amendment, because it will improve the skills of employees who may be called upon to use their expertise in times of emergency or disaster.²³ Other commenters suggest that the rule amendment would likely increase the usefulness of existing national-level programs such as the Radio Amateur Civil Emergency Service (RACES),²⁴ the Amateur Radio Relay League's Amateur Radio Emergency Service (ARES[®]), or the US Department of Defense's Military Auxiliary Radio System (MARS).²⁵

10. On the other hand, several commenters state that the proposal would erode the amateur status of the service, which is an essential characteristic of amateur radio.²⁶ Nickolaus E. Legget argues that this “would lead to a ‘backdoor’ de facto reallocation of some frequencies to hospitals and related operations.”²⁷ Other commenters maintain that this proposal would exacerbate the tendency of some hospitals or other public safety agencies to replace commercially available CMRS equipment with less expensive amateur radio equipment, intending to rely on amateur radio and employee licensees for communications.²⁸ One commenter, James T. Philopen, states that the Commission lacks authority to amend the existing rule under Article 1, Section II Radio Service, subpart 56 of the International Telecommunications Treaty, which defines the Amateur Radio service as one “without pecuniary

²² See, e.g., HAP Comments at 1-2 (citing to <http://www.fcc.gov/pshs/emergency-information/guidelines/health-care.html> [PSHSB Emergency Information Guidelines, Healthcare Sector] and <http://www.fcc.gov/pshs/clearinghouse/best-practices.html> [PSHSB Clearinghouse Best Practices]).

²³ See, e.g., ARRL Reply Comments at 1, West Comments at 2, Duckworth Comments at 1, Husher Comments at 1, Simpson Comments at 1, Daniel Comments at 1, Knight Comments at 1, Myers Comments, Holmes Comments at 1, Squire Comments at 1, Brown Comment at 1, Forbes Comments at 1, Jarvi Comments at 1, Burbridge Comments at 1, Williamson Comments at 1, Gori Comments at 1, Griffin Comments at 1, Williamson Comments at 1, Hanser Comments at 1, Clifton, Van Wanbeck Comments at 1, Mackay Comments at 1, Williamson Comments at 1, Johnson Comments at 1, Wathen Comments at 1, Oakley Comments at 1, Ives Comments at 1, Guice Comments at 1, Jung Comments at 1, Woodward Comments at 2. See also Young Comments (urging the Commission to state that amendment will not be used “as a way to circumvent the purpose of amateur radio”).

²⁴ See 47 C.F.R. § 97.407.

²⁵ See Russel Comments at 1, SVRIP Comments at 1, Carr Comments at 1, Freitag Comments at 1.

²⁶ See, e.g., Wintersole Comments at 1, Swift Comments at 1 (arguing that the rule will undermine the “Volunteer Spirit” of amateur radio) Gary Sawyer Comments at 1 (arguing that “amateur radio is not the only or the last solution” and that volunteer amateurs can serve this function), Courson Comments at 1 (arguing that the proposed language is too vague and would lead a “hospital class” of licensees), Anders Comments at 2-3 (arguing that agencies will be encouraged to require employees to seek licenses and will ultimately result in the loss of amateur frequencies to government agencies), Johnston Comments at 2-3 (stating that it would be a “massive breach” of the fundamental core of the Amateur service), Rinaca Comments at 1 (arguing RACES could cover needs of emergency communications), Houlne Comments at 2-5, Wisheart Comments at 1-2, Connell Comments at 4, Jackson Comments at 1, Keith Comments at 1, Tureny Comments at 1, Sawyer Comments at 1, Hirsh Comments at 1, McDowell Comments at 1, George Comments at 1.

²⁷ See Legget Comments at 3. See also Jackson Comments at 1 (arguing that the rule will result in government and non-government organizations relying more heavily on amateur radio for disaster communications rather than investing in more robust communications systems), Houlne Comments at 3 (arguing that employers see the lower cost of amateur radio equipment as relief for strained budgets). Even supporters of the amendment express concern that governmental bodies will be tempted to use amateur radio frequencies and equipment to conduct routine business. See, e.g., McVey Comments at 2-4 (arguing that the rule should emphasize that is not to routine business is not to be conducted using amateur radio), ARRL Reply at 5-6 (cautioning that the Commission should not permit the substitution of amateur radio for appropriate land mobile, commercial mobile or personal radio services).

²⁸ See, e.g., Stanley Comments at 1, Johnston Comments at 8.

interest.”²⁹ Another commenter objects to the proposed amendment, stating that such a rule would lead to employees being coerced into using their amateur privileges, including using their amateur privileges in ways prohibited by our rules.³⁰ Finally, a handful of commenters suggest alternative language or request additional definitions to the proposed rule,³¹ or recommend alternative regulatory treatment.³²

11. As we noted in the *NPRM*, experience has shown that amateur operations can and have played an essential role in protecting the safety of life and property during emergency situations and disaster situations.³³ Moreover, the current amateur radio service rules, which permit participation in such drills and tests by volunteers (*i.e.*, non-employees of participating entities), reflect the critical role amateur radio serves in such situations.³⁴ However, as evidenced by recent waiver requests, state and local government public safety agencies, hospitals, and other entities concerned with the health and safety of citizens appear to be limited in their ability to conduct disaster and emergency preparedness drills, because of the employee status of amateur radio licensees involved in the training exercises.³⁵ We therefore amend our rules to permit amateur radio operators to participate in government-sponsored emergency and disaster preparedness drills and tests, regardless of whether the operators are employees of the entities participating in the drill or test. We find that extending authority to operate amateur stations during such drills will enhance emergency preparedness and response and thus serve the public interest.

12. In reaching this decision, we do not find persuasive those comments stating that this decision will erode the amateur radio service. The exception we provide today is limited to the duration and scope of the drill, test or exercise being conducted, and operational testing immediately prior to the drill, test or exercise. Further, when such operations are conducted in these limited circumstances, the amateur communications are only one component of the overall and more extensive communications activities that are involved with emergency drills and tests. Thus, we do not foresee the use authorized herein to be extensive enough to amount to an erosion of the amateur radio service. Moreover, under

²⁹ Philopen Comments at 1.

³⁰ See Casselberry Comments at 1. See also Johnston Comments at 2 (stating that government entities would encourage their employees to misuse the service), Hamel Comments at 1 (recommending the addition of the word “voluntarily” to ensure participation is not part of the employee’s paid duties), Houlne Comments at 3 (asserting that employers are beginning to require their employees to seek amateur radio licensees so they do not have to rely on volunteers).

³¹ See Montierth Comments at 2, King Comments at 1-2, Bourne Comments at 2, Anders Comments (recommending definitions of “government sponsored” and “emergency” or “disaster relief”).

³² See Montierth Comments at 2. One commenter, Johnston, filed a petition for rulemaking, seeking the reestablishment of the Commission’s former Part 99 Disaster Radio Service. See Johnston, Petition for Rulemaking (filed June 9, 2010). This petition was not filed as part of the instant docket. Because the petition raises issues beyond the scope of the instant proceeding, we will act on it separately.

³³ *NPRM* at ¶ 1.

³⁴ *Id.* at ¶ 5. See also 47 C.F.R. §§ 97.1, 97.111(a)(2), 97.401-407.

³⁵ See, e.g., the following letters from the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, granting waiver requests: Letter to Frederick A. Zacher, DeWitt County Emergency Services and Disaster Agency, DA 09-2420 (Nov. 16, 2009); Letter to Matt May, Assistant Director, Johnson County Emergency Management and Homeland Security, DA 09-2377 (Nov. 4, 2009); Letter to Dale D. Rowley, Director, Waldo County Emergency Management Agency, DA 09-2332 (Oct. 28, 2009); Letter to Robert L. Stephens, Emergency Communications Supervisor, Kentucky Department of Military Affairs, DA 09-2302 (Oct. 27, 2009); Letter to Annie Robinson, Senior Program Specialist, Hospital Preparedness Program, Mendocino County HHS/CHS, DA 10-1004 (Jun. 4, 2010); Gregory L. Boswell, R.N., Program Manager, County of Orange Health Care Agency, DA 10-797 (May 10, 2010).

existing rules, licensed employees may use amateur radio privileges when an emergency has rendered other communications unavailable.³⁶ Our decision reflects the practical reality that a large number of agencies and organizations at the state and local levels coordinate with their local volunteer amateur radio operators to conduct emergency drills and exercises in concert with other modes of communication, such as land mobile radio. This integrative activity is essential to allow for a practiced response on the part of the first responder community in the event of an emergency. Because some of those drills and exercises include transmission of amateur communications by employees of participating entities, this rule amendment will support our ongoing emergency preparedness and response priorities and is therefore consistent with the public interest.

13. We also reject the comments claiming that we lack the authority to amend our amateur rules because it conflicts with the Communications Act and the prohibition on “pecuniary interest” in the ITU treaty. The Commission’s authority under the Communications Act to propose, promulgate and amend rules for the purpose of promoting safety of life and property through the use of wire and radio communication is well-established.³⁷ Moreover, the limited action we are taking here does not violate the ITU treaty. The ITU Radio Regulations specifically state that “[a]dministrations are encouraged to take the necessary steps to allow amateur stations to prepare for and meet communication needs in support of disaster relief.”³⁸ The rule amendments we adopt today do not undermine the “pecuniary interest” limitation. Rather, the amended rules provide a discrete exception to the existing rule that prohibits any pecuniary interest attributable to the operator including communications on behalf of an employer. We also find unpersuasive comments that suggest that the amended rules either will cause employees to be coerced to transmit amateur radio messages or would cause entities to use amateur radio privileges in any way that would violate the Commission’s rules.³⁹ The flexibility of amateur operators will remain limited by the requirements of the Communications Act and the Commission’s rules, including the rule amendments we adopt herein. Our action today does not alter the responsibilities of these operators, and, as was the case under the prior rules, amateur licensees are obliged to operate their radio stations in compliance with the terms of their licenses, notwithstanding any conflicting instruction from their employers. In any event, we do not expect that employer overreaching is likely to be a problem, given that the amended rules reflect a spirit of cooperation recognized by both the public safety community and the amateur radio community as necessary for preparing for times of emergency or disaster.

14. We also find it unnecessary to adopt alternative language or specify additional definitions.⁴⁰ We find our proposed language is sufficiently clear. The purpose of the rule amendment is to promote the effectiveness and usefulness of emergency operations by permitting licensed employees to practice the skills they would use in an actual emergency as a last resort, *i.e.*, should other means of communications fail or be unavailable. We find that the amended language is narrowly tailored to achieve these ends.

³⁶ 47 C.F.R. § 97.403.

³⁷ See 47 U.S.C. § 151 (establishing the Commission for “purpose of promoting safety of life and property through the use of wire and radio communication”).

³⁸ Article 25.9A, Section 5A, International Telecommunications Union Radio Regulations.

³⁹ See, *e.g.*, Casselberry Comments at 1, Jackson Comments at 1 (arguing that the rule will result in government and non-government organizations relying more heavily on amateur radio for disaster communications rather than investing in more robust communications systems), Houlne Comments at 3 (arguing that employers see the lower cost of amateur radio equipment as relief for strained budgets).

⁴⁰ See Montierth Comments at 2, King Comments at 1-2, Bourne Comments at 2, Anders Comments (recommending definitions of “government sponsored” and “emergency” or “disaster relief”).

15. In amending the amateur radio rules, we reiterate that we do not intend to disturb the core principle of the amateur radio service as a voluntary, non-commercial communication service carried out by duly authorized persons interested in radio technique with a personal aim and without pecuniary interest.⁴¹ Rather, we believe that the public interest will be served by establishing a narrow exception to the prohibition on transmitting amateur communications in which the station control operator has a pecuniary interest or employment relationship, and that such an exception is consistent with the intent of the amateur radio service rules.⁴² Accordingly, we limit the amateur operations in connection with emergency drills to the duration and scope of the drill, test or exercise being conducted, and to operational testing immediately prior to the drill, test or exercise.⁴³

16. Some commenters request more specific limits on the duration of the use of amateur radio services to prevent continuous drills and the bandwidth from becoming *de facto* emergency service spectrum.⁴⁴ We decline to adopt specific time restrictions other than a limit tied to the duration of the exercise. We find that such matters should be left to the discretion of the sponsoring agencies. We emphasize, however, that the amendment does not permit communications unrelated to the drill or exercise being conducted. Other commenters suggest that the rules should specifically provide for more expansive operational testing.⁴⁵ Boeing suggests that testing be permitted thirty days prior to a scheduled government sponsored drill.⁴⁶ We decline to specify the timing or duration of emergency drills. As evidenced by the waiver requests that have been submitted, we expect that agencies will schedule emergency drills or exercises at appropriate times and for appropriate durations.

17. *Non-Government-sponsored Emergency Drills.* In the *NPRM*, we proposed that the emergency tests and drills must be sponsored by Federal, state, or local governments or agencies, in order to limit the narrow exception to ensure that drills further public safety.⁴⁷ We noted, however, that there may be circumstances where conducting emergency drills for disaster planning purposes, even if not government-sponsored, would serve the public interest.⁴⁸ Accordingly, we sought comment on whether

⁴¹ See 47 C.F.R. §§ 97.1, 97.3(a)(4).

⁴² We note that the Commission has carved out other narrow exceptions to the prohibition on transmission of amateur communications in which the station control operator has a pecuniary interest. See 47 C.F.R. § 97.113(c) (permitting control operators who are employed in teaching positions to transmit amateur communications as part of classroom instruction at an educational institution) & (d) (permitting the control operator of a club station to accept compensation for transmitting telegraphy practice or informational bulletins under certain conditions).

⁴³ *NPRM* at ¶ 6.

⁴⁴ See, e.g., Kimtantas Comments at 1, Platt Comments at 1, Saverango Comments at 1, Harrison Comments at 1, Slye Comments at 1, McVey Comments at 3, Anders Comments at 4.

⁴⁵ Hoffman Comments at 1, Harrington Comments at 1, Boeing Comments at 6-7, Abbey Comments at 1, Welton Comments at 1, Gosnell Comments at 1, Siddon Comments at 1.

⁴⁶ Boeing Comments at 6-7. Boeing also recommends that the rule should be amended to “permit amateur radio station operators to operate digital messaging stations on a continuous basis for emergency and disaster preparedness on behalf of their employers.” *Id.* But see Boeing Reply at 5 (stating that if the Commission permits participation in non-governmental drills these recommendations would be unnecessary).

⁴⁷ *NPRM* at ¶ 7.

⁴⁸ *Id.* For example, we noted that the accrediting standards for health care organizations require hospitals and organizations that offer emergency services (or are community-designated disaster receiving stations) to annually conduct emergency preparedness drills for mass casualty scenarios. While such drills may be conducted for accreditation purposes rather than as part of a government-sponsored activity, they arguably serve similar purposes in terms of enhancing emergency preparedness and response. *Id.*

we should permit employee operation of amateur stations during non-government-sponsored emergency drills, if the purpose of the drill is to assess communications capabilities, including amateur radio, in order to improve emergency preparedness and response.⁴⁹

18. Most of the commenters who support permitting employee operation of amateur stations during government sponsored drills also support such operation during non-government-sponsored emergency drills, if the purpose of the drill is to assess communications capabilities to further public safety.⁵⁰ However, a few commenters opposed expansion of the rule to include non-government sponsored emergency drills.⁵¹ For example, Holtz states that this would “open the door for significant commercial abuse and exploitation of the amateur service;” that in the “absence of government sponsorship, there is ambiguity about whether any particular drill by a commercial entity is primarily for its own benefit, or for the public benefit;” and that this would create “an incentive for employers to pressure employees to get amateur licenses, and to pressure licensed amateurs to engage in questionable or prohibited practices,” *i.e.*, to use “amateur radio as a lower-cost substitute for Part 90 systems.”⁵² In relation to such concerns, Sheppard suggests limiting this expansion to those operations “when the emergency drill or test is sponsored by an agency or organization which supports public safety or public health.”⁵³ And Traynor suggests limiting such expansion to “organizations defined by FEMA as providing the nation with Critical Infrastructure and Key Resources (CIKR) as described in the National Infrastructure Protection Plan (NIPP).”⁵⁴ Earlier, in response to the AHA Petition, ARRL asked that AHA’s requested waiver be limited to radio transmissions made by hospital employees that are “necessary to participation in emergency preparedness and disaster drills that include Amateur operations for the purpose of emergency response, disaster relief or the testing and maintenance of equipment used for that purpose.”⁵⁵

19. In addition to Federal, state and local authorities, other non-government entities, such as private hospitals, have a direct interest in the health and welfare of citizens, especially during times of emergency or disaster. During those times, emergency communications serve a critical purpose to both governmental and non-governmental entities as well as to the constituencies they serve. As we determined above, familiarization, planning, and training are required for effective use of amateur radio in an emergency. We therefore find that the public interest would be served by permitting amateur radio

⁴⁹ *NPRM* at ¶ 7.

⁵⁰ *See, e.g.*, ARRL Comments at 9-10; Intermountain Comments at 1; Baumgurte Comments at 1-2; Bellar Comments 1-2; Bennington Comments at 1; Blowsky Comments at 1; Bourne Comments at 1; CPRA Comments at 2; Crocket Comments at 2; Dancey Comments at 1; Gourley Comments at 1; Josephson Comments at 1; Kirk Comments at 1; HAP Comments at 5-7; Lothrop Comments Lothrop; Jacquelyn May Comments at 1; James May Comments at 1; MCHC Comments at 9-12; Moell Comments at 2; Newell Comments at 1; Newton Comments at 1; Richmond Comments at 1; Sheppard Comments at 6-7; Siddon Comments at 1; Stewart Comments at 1; Traynor Comments at 1; Vordenbaum Comments at 2; Bradford Wagoner Comments at 1; Whedbee Comments at 3; WADH Comments at 1; White Comments at 1; Witte Comments at 1, ARRL Reply Comments at 3-5, Boeing Reply at 2-5. *See also AHA Petition.*

⁵¹ *See e.g.*, Holtz Comments at 1-2; McVey Comments at 4.

⁵² Holtz Comments at 1-2, Johnston Comments at 8. *See* ARRL Reply at 5-6 (cautioning that the Commission should not permit the substitution of Amateur Radio for appropriate land mobile, commercial mobile or personal radio services).

⁵³ Sheppard Comments at 7.

⁵⁴ Traynor Comments at 1.

⁵⁵ *See* ARRL Comments to AHA Petition at 9.

operators to participate in non-government sponsored emergency and disaster preparedness drills and tests, regardless of whether the operators are employees of the entities participating in the drill or test.

20. While we recognize commenters' concerns regarding the potential for improper use of amateur radio in conducting emergency drills and tests, we find that the public interest in permitting non-government-sponsored entities to utilize, on a limited basis, amateur radio as part of emergency preparedness and response drills outweighs such concerns. As with government-sponsored emergency drills, we limit the amateur operations in connection with non-government sponsored emergency drills to the duration and scope of the drill, test or exercise being conducted, and operational testing immediately prior to the drill, test or exercise. Moreover, in light of the concerns raised by some commenters, we require that non-government sponsored drills and tests be limited to no more than one hour per week; except that no more than twice in any calendar year, they may be conducted for a period not to exceed 72 hours. This time limitation, which is consistent with the timeframes contained in the waiver requests filed with the Commission, should serve to further ensure the use of amateur radio for bona fide emergency testing.⁵⁶ We emphasize that the purpose for any drills we authorize herein must be related to emergency and disaster preparedness. By limiting the purpose in this manner, we further ensure that such drills will be appropriately limited.

21. *ARPC Petition and AHA Petition.* ARPC requested we amend Section 97.113(a)(3) in order to permit amateur radio licensees employed by public safety agencies to participate in drills conducted by their employer. Similarly in its request, AHA emphasized the need to allow hospital employees with amateur radio licenses to participate in emergency preparedness and disaster readiness tests and drills. We appreciate both of these filings, and, as discussed herein, support the requested rule changes. Because we amend the rules in a manner that addresses the concerns raised by both petitioners, we dismiss both petitions as moot.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Certification.

22. The Regulatory Flexibility Act (RFA)⁵⁷ requires an initial regulatory flexibility analysis to be prepared for notice and comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁵⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶⁰ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in

⁵⁶ These further limitations on non-government sponsored emergency drills also correspond to those applied to the Radio Amateur Civil Emergency Service (RACES). See 47 C.F.R. § 97.407(e)(4).

⁵⁷ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁵⁸ See 5 U.S.C. § 605(b).

⁵⁹ See 5 U.S.C. § 601(6).

⁶⁰ See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁶¹

23. Because “small entities,” as defined in the RFA, are not persons eligible for licensing in the amateur service, this proposed rule does not apply to “small entities.”⁶² Rather, it applies exclusively to individuals who are the control operators of amateur radio stations. Moreover, the rule being adopted is so narrow that no nexus exists between the regulated amateur licensees who may be employed, and costs to be born by employers (e.g. overtime pay). Therefore, if there were any costs imposed on employers, that is a matter outside the scope of the rule and thus the impact of the rule cannot be said to involve the imposition of any economic burden on those individual persons who are the only entities regulated and impacted by the rule adopted in this *Report and Order*. Finally, no commenters addressed our conclusion in the NPRM and small entities which filed comments uniformly supported the proposed rule changes. Therefore, we certify that the proposals in this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Report and Order*, including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.⁶³ This final certification will also be published in the Federal Register.⁶⁴

B. Paperwork Reduction Act Analysis.

24. This *Report and Order* does not contain proposed information collection(s), subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, the *Report and Order* does not contain any proposed new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

C. Congressional Review Act.

25. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(4).

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 303(r), and 403, that American Hospital Association request for blanket waiver to permit hospitals to use amateur radio as part of emergency preparedness drills is HEREBY DISMISSED.

27. IT IS FURTHER ORDERED pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 303(r), and 403, that Amateur Radio Policy Committee Petition for Rulemaking is HEREBY DISMISSED.

28. IT IS FURTHER ORDERED, pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 303(r), and 403, that this *Report and Order* is HEREBY ADOPTED.

⁶¹ *See* 15 U.S.C. § 632.

⁶² *See* 5 U.S.C. § 601(6).

⁶³ *See* 5 U.S.C. § 605(b).

⁶⁴ *See id.*

29. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**List of Commenters**

Abbey, Russell (Abbey)
Anders, Roland A. (Anders)
Angelos, Christopher (Angelos)
Arkansas Department of Health (ARDH)
Arlington County Virginia Office of Emergency Management (ACVOEM)
American Radio Relay League (ARRL)
Association of Public Safety Communications Officials (APCO)
Atchley, Jr. George W. (Atchley)
Bagby, Erik M. (Bagby)
Baillie, Gordon (Baillie)
Barnett, Daniel (Barnett)
Barrett, Patrick (Barrett)
Baumgarte, Dennis (Baumgarte)
Bellar, Kirk (Bellar)
Bennington, R. Lowell R. (Bennington)
Beshlian, Paul (Beshlian)
Blackwell, Tom (Blackwell)
Blowsky, John (Blowsky)
Bone, Merle (Bone)
Bourne, Kenneth M. (Bourne)
Broadway, Gordon S. (Broadway)
Broshofske, Kenneth (Broshofske)
Brown, Douglas (Douglas Brown)
Brown, R. (R. Brown)
Burbridge, Bill (Burbridge)
Burningham, John S. (Burningham)
Burns, Bill (Burns)
California Public-Safety Radio Association (CAPSRA)
Carr, Lawrence W. (Carr)
Casselberry, Jeffery (Casselberry)
City of Daytona Beach (Daytona)
Clifton, Russ (Clifton)
Cody, Thomas J. (Cody)
Colston, Lloyd (Colston)
Connell, Robert (Connell)
Cooke, Mike (Cooke)
Corbaley, Leonard (Corbaley)
Courson, Paul (Courson)
Crosswell, Alan (Crosswell)
Dailey, Thomas C. (Dailey)
Dancey, Michael (Dancey)
Daniel, Jack (Daniel)
Davisson, Robert (Davisson)
DeKam, Douglas (DeKam)
Duckworth, James (Duckworth)

Dye, Jimmie W. (Dye)
Ellsworth, Sterling (Ellsworth)
Encalada, Armando (Encalada)
Fields, Thomas (Fields)
Fink, Denis C. (Fink)
Fishman, Bob (Fishman)
Forbes, Robert (Forbes)
Foreman, William (Foreman)
Frank, Ph.D., Harold H. (Frank)
Freitag, David B. (Freitag)
Frost, Mel (Frost)
Gadus, Joe (Gadus)
Geng, Karl (Geng)
George, Max M. (George)
Getman, Clyde J. (Getman)
Godfrey, John (Godfrey)
Gori, John (Gori)
Gosnell, Murell R. (Gosnell)
Gothelf, Alan (Gothelf)
Gourley, Joe (Gourley)
Greeno, Charles (Greeno)
Griffin, Jeffrey (Jeffrey Griffin)
Griffin, Larry (Larry Griffin)
Gross, Malvin Ryan (Gross)
Gundry, Alex (Gundry)
Hadley, George (Hadley)
Hamel, Patrick (Hamel)
Hansen, N. Michel (Hansen)
Harrington, Brian J. (Harrington)
Harrison, Lamond K. (Harrison)
Hashiro, Ron (Hashiro)
Headrick, Loyd C. (Headrick)
Hensley, Martin (Hensley)
Herr, Paul W. (Herr)
Hirsh, Craig (Hirsh)
Hoffman, Herb (Hoffman)
Holmes, Dolph (Holmes)
Holtz, Ronald (Holtz)
The Hospital & Healthsystem Association of Pennsylvania (HAP)
Huber, Dave (Huber)
Hudson, Dennis R. (Hudson)
Husher, Ray (Husher)
Jackson, Benjamin (Jackson)
Jarvi, Eric (Jarvi)
Johns, Bryan (Johns)
Johnson, James (Johnson)
Johnston, John B. (Johnston)
Josephson, David (Josephson)
Karpman, Michael M. (Karpman)
Keith, Joe (Keith)
Kimtantas, Charles (Kimtantas)

King, David (King)
Kirk, William (Kirk)
Kirley, Paul O. (Kirley)
Knight, Mike (Knight)
Larribeau, John (Larribeau)
Leggett, Nickolaus E. (Leggett)
Los Angeles County (Los Angeles)
Lothrop, Fred H.G. (Lothrop)
Lynch, Chief Jeffrey P. (Lynch)
Mackay, Tom (Mackay)
Marcel, John (Marcel)
May, Jacquelyn J. (Jacquelyn May)
May, James Matthew (James May)
McDowell, Glen (McDowell)
McVey, W. Lee (McVey)
Metropolitan Chicago Healthcare Council (MCHC)
Mitz, Andrew (Mitz)
Moell, April (Moell)
Montierth, Joe (Montierth)
Myers, Tim (Myers)
Nehrbass, Charles R. (Nehrbass)
Nelson, Kathleen (Kathleen Nelson)
Nelson, Brett (Brett Nelson)
Newell, Peter R. (Newell)
Newton, Richard (Newton)
Niemuth, William M. (Niemuth)
Noble, Andrew (Noble)
Oakley, Michael (Oakley)
Parker, Morris C. (Parker)
Parlini, Flash (Parlini)
Paterson, Jr., John M. (Paterson)
Payne, Robert (Payne)
Pechner, Michael (Pechner)
Peters, Timothy (Peters)
Philopena, James T. (Philopena)
Pielage, Henry W. (Pielage)
Platt, David C. (Platt)
Potter, Ronald (Potter)
Powell, William (Powell)
Ray, Richard L. (Richard Ray)
Ray, James M. (James Ray)
Reid, Don (Reid)
Richardson, Malcolm (Richardson)
Richmond, Gerald (Richmond)
Rickabaugh, Greg (Rickabaugh)
Rinaca, Phillip (Rinaca)
Russell, James (Russell)
Savegnago, Allen Kurt (Savegnago)
Sawyer, Gary (Sawyer)
Sawyer, Gary (Sawyer)
City of Seattle Office of Emergency Management, Seattle auxiliary Communications Service, and

Western Washington Medical Services Communications, Inc. (Seattle)
Siddon, Dewayne (Siddon)
Silicon Valley Regional Interoperability Project (SVRIP)
Simonowits, Gerald (Simonowits)
Simpson, Monte L. (Simpson)
Slattery, Timothy (Slattery)
Slye, Jr., William R. (Slye)
Snyder, Capt. Steve R. (Snyder)
Somers, Sarah (Somers)
Soptich, Lee (Soptich)
Squires, Caleb (Squires)
Stanford, Henry King (Stanford)
Stanley, John (Stanley)
Staples, Alan (Staples)
Stewart, Sr., William W. (William Stewart)
Stewart, Terry W. (Stewart)
Sweetman, Steve (Terry Sweetman)
Swift, John C. (Swift)
The Boeing Company (Boeing)
Thomas, Glenn (Thomas)
Timmerman, Benjamin R. (Timmerman)
Tortorella, Michael (Tortorella)
Traynor, Stephen (Traynor)
Turney, Bill (Turney)
Uhlir, Charles (Uhlir)
Vandermark, Christopher (Vandermark)
VandeWettering, Mark (VandeWettering)
VanWambeck, Stephen (VanWambeck)
Vordenbaum, Marilyn (Vordenbaum)
Wade, Martin D. (Wade)
Wade, Martin D. (Wade)
Wagoner, Bradford (Bradford Wagoner)
Wagoner, William L. (William Wagoner)
Wagoner, Charles (Charles Wagoner)
Washington State Department of Health (WADH)
Wathen, James (Wathen)
Watkins, John (Watkins)
Welton, John (Welton)
West, David (West)
West, Gordon (Gordon West)
Whedbee, James Edwin (Whedbee)
White, Shirley (White)
Williamson, Wayne Dee (Wayne Williamson)
Williamson, Martha Mary (Martha Williamson)
Williamson, Erik Wayne (Erik Williamson)
Williamson, Dee Wayne (Williamson)
Wilson, Gary (Wilson)
Wintersole, Mark (Wintersole)
Wireless Telecom & Public Safety (WTPS)
Wisehart, Christopher (Wisehart)
Witte, Robert (Witte)

Woodard, Thomas Lee (Woodard)
Young, Charles (Young)
Zalen, Janice (Zalen)

List of Reply Commenters

American Radio Relay League (ARRL)
Association of Public Safety Communications Officials (APCO)
Baremore, Kenneth R. (Baremore)
Blackwell, Tom (Blackwell)
The Boeing Company, (Boeing)
California Emergency Management Agency (CEMA)
County of Los Angeles (Los Angeles)
Crockett, John M. Jr. (Crockett)
Gothard, John F. (Gothard)
Guice, Bobbie (Guice)
Hashiro, Ron (Hashiro)
Hospital and Healthsystem Association of Pennsylvania (HAP)
Houlne, William (Houlne)
Intermountain Healthacare (Intermountain)
Ivens, Kevin (Ivens)
Jung, Clement (Jung)
Kaimimoku, Cynthia (Kaimimoku)
Little, Michael (Little)
Mariotti, Duane (Mariotti)
Masuda, Ruth (Masuda)
McVey, W. Lee (McVey)
Maryland Emergency Management Agency (MEMA)
Metropolitan Chicago Healthcare Council (MCHC)
National Public Safety Telecommunications Council (NPTC)
Oakley, Micheal (Oakley)
Peters, Timothy (Peters)
Rinaca, Phillip (Rinaca)
Sheppard, Mark (Sheppard)
Traynor, Stephen (Traynor)
Watson, Jr., Howard B. (Watson)
Wilkerson, Jr., Johnny L. (Wilkerson)
West, Karl J. (West)
West, Gordon (Gordon West)
Woodard, Thomas Lee (Woodard)

APPENDIX B

Final Rules

Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

The authority citation for part 97 continues to read as follows:

AUTHORITY: 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.

1. Section 97.113 is amended by revising paragraph (a)(3), adding new paragraphs (a)(3)(i) and (a)(3)(ii), redesignating paragraphs (c) and (d) as new paragraphs (a)(3)(iii) and (a)(3)(iv) respectively, and redesignating paragraphs (e) and (f) as (c) and (d) respectively, to read as follows:

§ 97.113 Prohibited transmissions.

(a) * * *

(3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer, with the following exceptions:

(i) A station licensee or control station operator may participate on behalf of an employer in an emergency preparedness or disaster readiness test or drill, limited to the duration and scope of such test or drill, and operational testing immediately prior to such test or drill. Tests or drills that are not government-sponsored are limited to a total time of one hour per week; except that no more than twice in any calendar year, they may be conducted for a period not to exceed 72 hours.

(ii) An amateur operator may notify other amateur operators of the availability for sale or trade of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis.

(iii) A control operator may accept compensation as an incident of a teaching position during periods of time when an amateur station is used by that teacher as a part of classroom instruction at an educational institution.

(iv) The control operator of a club station may accept compensation for the periods of time when the station is transmitting telegraphy practice or information bulletins, provided that the station transmits such telegraphy practice and bulletins for at least 40 hours per week; schedules operations on at least six amateur service MF and HF bands using reasonable measures to maximize coverage; where the schedule of normal operating times and frequencies is published at least 30 days in advance of the actual transmissions; and where the control operator does not accept any direct or indirect compensation for any other service as a control operator.

* * * * *