



The Commercialization Of Amateur Radio

**The Ethics of Public Service Communications
in the Amateur Service**

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October 2009

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NERPC HIT THE NAIL ON THE HEAD

We may be entering an era when a different kind of threat to Amateur Radio spectrum has to be dealt with; one which is directly related to emergency communications. **In addition to protecting our spectrum from our enemies, sometimes we also have to protect it from our friends.** These are entities which have become aware of Amateur Radio's value during disasters, either from first-hand observation or from our effective public relations efforts.

Some organizations are expressing interest in using Amateur Radio in ways that are not in the best interests of our radio service that run contrary to the spirit, if not the letter of the FCC's rules.

We are hearing about agencies which, having heard that Amateur Radio works "when all else fails" decide that the answer to their communications problems is to get some Amateur Radio gear. They have heard that in life-and-death situations, the FCC's rule about having licenses goes out the window. So...it will be all right to skip the licensing bit and plan to use Amateur Radio equipment....

NERPC Report, at Page 17 and 18

From ARRL Report of the FCC Forum, Dayton Hamvention, May 2009...

Section 97.113 is in the rules for two reasons: It meets a statutory requirement and it is there to protect your frequencies from becoming the ***Business Radio Alternative Voice Overflow, or "BRAVO Service."***

Because your spectrum is so valuable, if you let users such as businesses, TV stations, the National Weather Service or other users -- be they for-profit or non-profit -- use your frequencies to meet their communications needs, your frequencies will become their frequencies. All it takes is an allocation proceeding with the FCC, and your spectrum is gone. And you will be left whining about it in Internet chat rooms."

Commercialization: An Increasing Trend

- FCC regulations governing business communications are extremely flexible.
- Amateur radio operators are generous with their time and eager to demonstrate the capabilities of their Service.
- For emergency communications planning, land mobile radio equipment is expensive and licensing is complicated. Public Safety entities and municipal governments have severe budget limitations, especially now, as do private sector entities such as hospitals.
- Land mobile channels are scarce in many markets.

Let's be clear what 97.113 says...

§97.113 Prohibited transmissions.

(a) No amateur station shall transmit:

- (2) Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules;
- (3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer. Amateur operators may, however, 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;
- 5) Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.

The rules do NOT say...

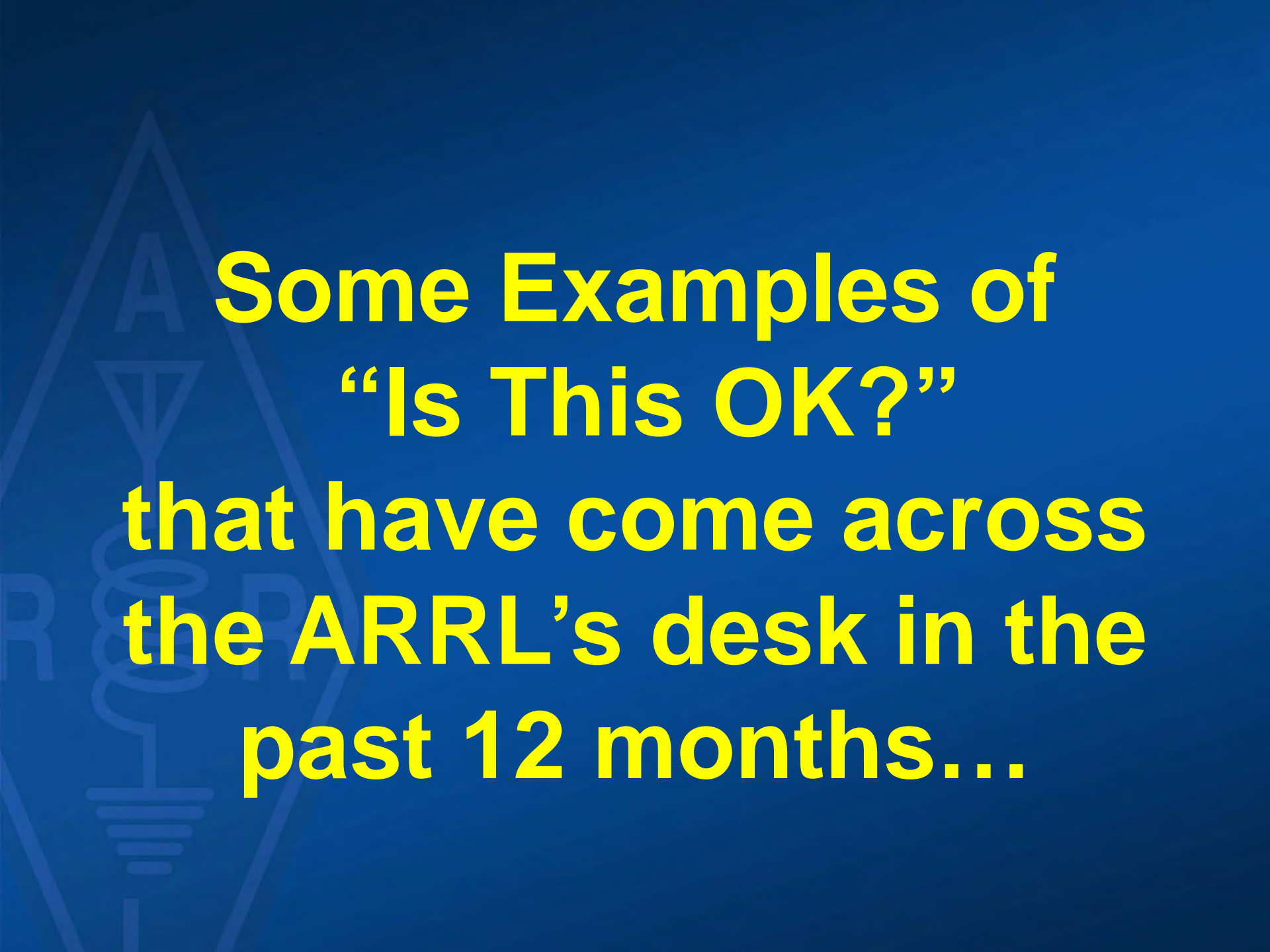
In an emergency, anything goes...

The rules are “waived” for drills & practice...

It's OK to provide communications for your company if you are “off the clock” or “volunteering”...

It's OK to provide communications if the group/business is a not-for-profit or “helping” organization...

It's OK to use Amateur Radio as an alternative to Part 90 or Part 95 communications systems since it is “easy and inexpensive”...

The background features a large, faint watermark of the ARRL logo, which is a diamond shape containing a stylized antenna and the letters 'A', 'R', 'R', 'L' arranged vertically.

**Some Examples of
“Is This OK?”
that have come across
the ARRL’s desk in the
past 12 months...**

From a June 2009 [insurance company] Employee Newsletter...

Amateur Radio Operators (HAMs) Assistance Needed

The _____ Steering Committee that assists us with Crisis Management and Business Continuity planning for the _____ Campus is looking for special volunteers to assist them during crisis and during their practices. If you have an amateur radio license and would like to use your HAM skills to assist with communications for _____, please e-mail _____ (callsign).

Those who are not currently licensed HAMs but are skilled or experienced at using a hand-held radio can also volunteer and will be considered. Please contact Judy _____ at _____@_____.com or ____ - _____.

From a May 2009 email to N1ND...

I am helping set up an Emergency Radio system for the [Federal Agency] in California. We have 8 sites spread over hundreds of miles. In the event of an emergency, we are looking at how to communicate with our other sites other than via phone, email, or sat phone. The best solution seems to be using small 2 meter / 70 CM radios with some local repeaters.

My question is what licensing is required, if any, to use these types of radios during government emergency management operations? We have a base station being set up and I am licensed for a Technician, but our other clinics would just need to be able to transmit / receive information for support requests / updates as needed to / by me. **I'm thinking we might be able operate without license based upon job needs, similar to those who drive ambulance, police cars, etc...** Or am I totally off line???

From a September 2008 email to N1ND...

I was asked to contact you by the guy in charge of communications for the [state] Department of Natural Resources, _____. They are looking to get an official agreement with ARES for support in case they have an event that is large enough that they request our assistance.

Here is what really spurred this. They want to implement vehicle tracking in their fire equipment. I was asked to work on the project seeing that I am very familiar with APRS and use it all the time. My first push was to have them try to get agreements with local clubs or ARES groups and run the DNR trackers on the ham APRS network. The DNR decided that they wanted to go out on their own and build their own system. ***But now with tight budgets, it has come back to having their trackers work on the ham APRS system.*** The DNR units would only be used in situations that required it. They would not be running them all the time, only if they were on a large scale fire. Much like if the ARES groups were called in to help and we put trackers on the vehicles for them, only in this case they would be permanently installed on the DNR equipment. Over the past year, the trackers would not have been used unless just make sure they worked. I've talked with _____ about this and he doesn't see any legal issues with it as long as they use it the way they say they are.

If the DNR can get an agreement in place with ARES, the DNR would like ARES at the state level to sponsor their APRS equipment instead of working with smaller groups at the region or county level. ARES at the state level would just need to supply the DNR with a single call sign that can be beacons out with the position packets of the trackers.

If we can get an agreement between the DNR and ARES, and ARES allows the DNR to use a call sign for the tracking equipment, ***the DNR is willing to negotiate use of tower space on its DNR owned towers.*** Now before you get really excited, many of the towers the DNR is on are not owned solely by them. The only towers that we would be allowed on are the DNR owned towers.

An October 2008 telephone call to N1ND...

(Paraphrased)

I am the mayor of a municipality. After this year's close calls with hurricanes I realized we don't have an amateur repeater in our area we can rely on. So I am purchasing a ham radio repeater and 25 radios to install in municipal vehicles. I now need help on developing a plan on how we use them...

So, What are the rules?

In 1993, in Docket 92-136, the prohibition of use of the Amateur Radio Service as an alternative to other authorized radio services was relaxed...

“to give amateur operators greater flexibility to provide communications for public service projects as well as to enhance the value of the amateur service in satisfying personal communication needs.”

Section 97.113

- Formerly prohibited “*any communications the purpose of which is to facilitate the business or commercial affairs of any party.*”
 - Now, the rule prohibits communications:
 - “**for hire or for material compensation, direct or indirect, paid or promised...**”
 - “**in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer...**”
 - “**on a regular basis, which could reasonably be furnished alternatively through other radio services.**”

Prevention of Exploitation is Now Our Responsibility

- The 1993 relaxation of the business communications rule was “*in return for greater responsibility for self-regulation and cooperation in the use of its allocated frequencies [by the Amateurs].*”
- FCC allowed the provision of “assistance voluntarily even where there are other authorized radio services available.”
- FCC agreed to ARRL’s criterion that “any amateur-to-amateur communication is permitted unless specifically prohibited, or unless transmitted for compensation, or unless done for the pecuniary benefit of the station control operator or his or her employer.” However, pecuniary interests of an employer is not part of the rule; the rule looks only at the pecuniary interest of the station control operator or licensee. The employer/employee relationship is viewed as an instance in which pecuniary interest of the station licensee or control operator is presumed. So, communications “on behalf of” one’s employer are always prohibited.

Anecdotal Examples Of Proper Amateur Radio Applications Are Not The Way To Go

- ARRL had asked FCC in Docket 92-136 to provide a list of example of permitted and prohibited communications.
- FCC declined, saying that because of the wide diversity in the types of communications in which amateur operators want to engage, there would have to be “thousands of examples.”

Finding Our Appropriate Role

Our “traditional” role in disaster communications has been reduced by advances in technology.

Many of the new concerns & conflicts come from trying to find our niche in the new public safety field.

We should not diminish our role in emergency or public service communications. We should, practically and ethically, define Amateur Radio’s proper role in providing communications for others.

Some Basic Principles

- Amateur Radio should not be used as a substitute for Part 90 land mobile communications or other reasonably available alternate communications systems.
- Regardless of one's job description, and regardless of whether or not one is "on the clock" at the time of the communications, Amateur Radio communications should not be conducted on behalf of one's employer.
 - Emergency communications and public service communications should be readily provided by Amateur Radio operators **where the public is the principal beneficiary.**

Where do we go from here?

- July 2009 - ARRL Board directed a special Ad Hoc committee be appointed to investigate the problem and report back an assessment and suggestions on addressing it
- August 2009 - Ad Hoc committee finalized its report and forwarded to the ARRL Executive Committee for consideration and action.
- The Board's statement "Commercialization of Amateur Radio: The Rules, The Risks, The Issues" was released to the public on Friday September 25, 2009

“Commercialization of Amateur Radio: The Rules, The Risks, The Issues”

Some Highlights...

- **Communications for business entities by *volunteers* – that is, by licensed Amateurs who receive no direct or indirect compensation and who have no pecuniary interest in the communications – are legal as long as they are not conducted on a regular basis and otherwise comply with the FCC rules.**
- **Amateur Radio should not be used as a substitute for Part 90 Land Mobile communications or other reasonably available alternate communications systems, including unlicensed services.**
- **An enterprise, whether for-profit or non-profit, which intends to use Amateur Radio communications on a regular basis for its own basic organizational purposes, but could reasonably use other radio services available to them, should be steered toward those services. A *good rule of thumb when evaluating a particular request for communications support is, “Who benefits?”***

Walking the Narrow Path

It is a narrow path between...

- (1) utilizing beneficial opportunities for public service communications and showcasing the continued relevance and importance of Amateur Radio communications to the public; and
- (2) allowing organizations to exploit Amateur Radio as an inexpensive and easy alternative to the land mobile radio service, GMRS, or CMRS facilities.

3 Key Points To Remember

This is a serious problem - how we proceed can & will impact many areas of the amateur's role in providing public service communications.

Just because we can (technology wise) do something, the real question is "Should we be doing it?"

Amateurs need to use their good judgment - Avoid the "traps" which are often associated with public service communications.

On October 20, 2009 the FCC issued a Public Notice entitled:

Amateur Service Communications During Government Disaster Drills

Authored by the Wireless Telecommunications Bureau –
which is the FCC bureau with jurisdiction over amateur
radio regulations and their interpretation.

Issued jointly by the Wireless Telecommunications
Bureau, Enforcement Bureau, and Public Safety and
Homeland Security Bureau

Amateur Service Communications During Government Disaster Drills

Key points include:

“While the value of the amateur service to the public as a voluntary noncommercial communications service, particularly with respect to providing emergency communications, is one of the underlying principles of the amateur service, the amateur service is not an emergency radio service.”

“The Commission’s Rules, however, specifically 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.*”

Amateur Service Communications During Government Disaster Drills

Key points include:

“Given the public interest in facilitating government-sponsored emergency preparedness and disaster drills, we take this opportunity to provide a clear process for requesting a waiver, and the information that we require in order to consider granting such a waiver.”

The waiver process isn't new – waivers have been available by 47 C.F.R. § 1.925 for many years.

Amateur Service Communications During Government Disaster Drills

Waiver Process:

The government entity conducting the drill must request the waiver in a letter with the following information:

- When and where the drill will take place;
- Identification of the amateur licensees expected to transmit amateur communications on behalf of their employer;
- Identification of the employer(s) on whose behalf the amateur(s) will be transmitting; and
 - A brief description of the drill.
- Waiver requests go to: Wireless Telecommunications Bureau, 445 12th St SW, Washington, DC 20554, Attn: Scot Stone.

Amateur Service Communications During Government Disaster Drills

Waiver Cautions:

Waiver requests must come from government agencies – requests from non-governmental agencies will be dismissed.

Waiver must be granted before the event – simply requesting one does not guarantee its approval.

Any changes in the request must also be waived (such as additional personnel or entities to be covered by the waiver).

It is our understanding that each event must be waived – there will not be a “blanket waiver” to cover things like weekly nets for an extended period of time.

The bottom line - A good rule of thumb when evaluating a particular request for communications support is:

“Who benefits?”

If the public is the principal beneficiary, then §97.1 is being fulfilled because §97.1 refers to the "value of the Amateur Service to the public." If an entity itself rather than the general public is the principal beneficiary, then the entity should be encouraged to use radio services other than Amateur Radio.

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