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July 27, 2021

URGENT – IMMEDIATE ACTION NEEDED

RE: **FCC FANS THE FLAMES OF WILD FIRE THREAT
IMPERILLING LIFE AND SAFETY**

ATTENTION (VIA FAX / E-MAIL):

- ✓ GOVERNORS OFFICE – CALIFORNIA Fax: 916-558-3160
- ✓ FCC Commissioner Brendan Carr / Acting Chair Jessica Rosenworcel Fax 1-866-418 0232
- ✓ Rebecca Brown Rebecca.Brown@fcc.gov
- ✓ Jim Balaguer Jim.Balaguer@fcc.gov
- ✓ Congressman Doug LaMalfa CA-01 erinmarie.ryan@mail.house.gov
- ✓ Senator Brian Dahle: FAX (916) 651-4901 senator.dahle@outreach.senate.ca.gov
- ✓ Assemblywoman Megan Dahle: assemblymember.dahle@assembly.ca.gov
- ✓ Senator Dianne Feinstein Fax (202) 228-3954
- ✓ Speaker Nancy Pelosi Fax 202-225-8259 (202) 225-4965
- ✓ Senator Cruz cruz_press@cruz.senate.gov
- ✓ Senator Roy Blunt Fax 202-224-8149
- ✓ Devin Nunes Fax 202-225-3404

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✓ sent

Exhibit J

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To Whom It May Concern:

In excess of 7 (seven) stressful months have been spent by me on a very straight forward matter which directly threatens the life and safety of residents in Shingletown, California; other residents of California; and residents located anywhere in the United States that are subject to wildfires, floods, tornadoes, auto accidents involving life threatening injuries, wilderness incidents involving life threatening injuries, as well as other life threatening disasters and circumstances.

The narrow specific "issue" is summarized in my Congressional Representative's most recent July, 2021 e-mail to the FCC, as follows:

"It is beyond frustrating that I can't get the FCC to confirm their own regulation surrounding the use of the ham frequency by a non-ham in the event of an emergency. This goes back to early February and I still can't get a WRITTEN response. I need to share it with my constituents.

Can a non-ham use a ham frequency in order to save human life in an emergency. For illustration, assume a Ham and his wife are driving and have an auto accident. The Ham operator (husband) dies on impact. The wife is going to bleed to death without immediate medical attention, but she is not a licensed Ham operator. The Ham radio is working and she can reach it. The cell phone has no reception. Issue: Can the wife use the Ham radio to call for help?

The answer is either: Yes, or No.

I need a yes or no response ASAP."

- End of Congressional E-Mail to FCC-

The above is the sole "issue".

The above "issue" (which may only occur rarely, and is not routine) is very simple. But, the FCC is ignoring the law, its own regulations and is putting in immediate danger the life and safety of all Americans facing disasters, whether by wildfires, floods or other type situations.

In Shingletown, that one radio call at 2:00 AM in the morning may be the single alert which an entire neighborhood, or even all of Shingletown needs to avoid becoming trapped in a raging wildfire.

First, I wish to thank the Office of Congressman Doug LaMalfa and his staff, Erin Ryan, for working hard seeking to obtain a resolution from the FCC in this matter; However, the FCC has ignored my Congressman and his staff, even though the FCC told me to call him.

Second, this letter is seeking the assistance of anyone in public office that actually cares about the life and safety of Americans and recognizes that the FCC is ignoring the law, ignoring its own regulations and is placing in immediate danger the life and safety of citizens. That includes your City and State. Further, every private citizen should contact elected officials and the FCC and voice their outrage at this threat to the safety of themselves, their families and loved ones.

After attempting to get a response from the FCC and facing continual obfuscation and administrative deceit, and during February, 2021, I had a conference call with two persons at the FCC - Thomas Derenge thomas.derenge@fcc.gov and Joshua Smith joshua.smith@fcc.gov concerning these matters. Specific regulatory legal authority was provided to them on this matter, which is set forth herein. However, such FCC regulatory authority was not only ignored by them, but they refused to acknowledge the existence of their own FCC regulations, and denied that such FCC regulations even existed. They refused to even read the relevant regulations during the conference (the document containing such having been provided to them in advance of the Conference). It was like the classic Abbot and Costello - "Who's on First".

Except in this case, we are not dealing with comedy. Rather, people will die and the FCC is intentionally lying. For over SEVEN MONTHS (7 months) the FCC has made false statements, fabrications and outright lies in these matters. The FCC has clearly shown that it is an agency which is out of control, arbitrary, capricious, and one which views that it is not accountable to anyone! FCC officials need to be fired!

Compounding the life threatening impact of FCC malfeasance, are some who administer the FCC tests (necessary for one to become a licensed Ham) who likewise refuse to acknowledge the FCC regulations and law. They have instilled fear of huge fines and loss of license in the minds of Emergency Radio Plan participants. The result has been that years of work and progress has been undone, and the Shingletown Emergency Radio Plan almost destroyed. They falsely claim that if a non licensed person uses a ham frequency in the above situation (life threatening type situation, as above) that they can face massive fines, and that Hams assisting can lose their license. It has even resulted in a Ham Repeater (which was part of the Emergency Communication Plan) being removed from the emergency communications plan because of false claims of massive fines and reporting to the FCC. All of this has been taking place as we face massive wild fires. Well, those people have made the choice that their wife, children, and family can die in a wildfire – for the sake of their intentional ignorance. Thus, they would not take a call from a non ham during a fire, such as the Camp Fire [November 8, 2018]. On the other hand, the Shingletown Emergency Radio Plan Emergency Communications Policy concerning Hams and Non Hams reflects the U.S. Code and FCC regulations as written.

The Camp Fire (which involved an Area much like Shingletown geographically) was hit by fire that spread, at its peak, at the rate of 80 football fields a minute and where it was reported that **85 people lost their lives in the fire**. Some died in their cars as they were trying to escape. The vast majority of people who died were 60 years or older].



Family fleeing the Camp Fire – surrounded by fire.

Years in the making, the Shingletown Emergency Radio Plan is the **ONLY SYSTEM** in Shingletown, California, that can immediately alert residents with radios of a wildfire even when all other communication systems have totally failed! I have been told that there is no other system like it in Northern California. This Emergency Radio System has actually alerted and had immediate communications capability for over 150 square miles in a matter of seconds when there was no electricity, no telephone, no internet, no 911, no code red, and no reverse 911. It is a communication plan / system based upon the premise that: all systems are down, there is a total communication failure and we have an emergency (e.g., fast approaching wild fire) and there is no phone, no ability to call 911.

During this 2021 wildfire season, Shingletown Area(s) / resident(s) have already been subjected to all of the following:

- PG&E Electrical power shutoff;
- Failure of community backup generator for water system during a
PG&E Power Shutoff resulting in no water to the fire hydrants;
- Telephone land line failure;
- Internet failures;
- VOIP failure;
- Cell phone failure;
- No ability to call 911
- No ability to receive 911 calls; and
- Actual wildfires!

Every night, the evening news pounds into listeners ears the threat of wild fires, evacuation preparation, and to have a "Plan".

To show how a wild fire can become very large endangering life and property, one only need to look at the current Dixie fire and report at <https://gacc.nifc.gov/oncc/news.php> :

07/27/2021 0700 **CA-BTU Dixie Fire:** 208,206 acres timber, 23% contained. There is a chance of thunderstorms over the fire area throughout the week. Moderate fire activity reported overnight. Evacuation Orders and Warnings in effect for multiple communities. Threats to critical water and power infrastructure, critical communications infrastructure for CHP, Cal Fire, Fish and Wildlife, high value private timberlands, Feather River Watershed, critical wildlife habitat, and cultural and historical sites. Rail lines closed due to damage and continue to remain threatened. Highways 70, 89 and 32 have closures as well as areas closures for Lassen N.F, Plumas N.F and Lassen N.P. Pacific Crest Trail closed in the area. Unified command: CAL Fire IMT 1 (Truax) & Type 1, CA Team 2 (Minton). (emphasis added).

The Shingletown Emergency Radio Plan has allowed Shingletown areas to issue alerts, and communicate immediately – when it matters (i.e., before you and your family become trapped in a raging wildfire, and burned to death). The refusal of the FCC to even read its own regulations (and some Hams) is absurd, and people will die.

We keep hearing in Northern California about the deadly wild fire threat, and for people to prepare, and for people to have communication plans, etc... . This is every night on the news!

That this matter is even an "issue" is absurd. In reality, there is NO issue. It is nothing short of the lying and deceit on the part of the FCC. The real agenda of the FCC is simply unknown at this time. But whatever it is, such is certainly not in keeping with public safety, the United States Code or the FCC regulations.

The FCC has falsely claimed that - "...Simply put, we recognize the important role that amateur operators play in emergency communications; however, there is no provision in the Rules that would allow unlicensed use in the amateur bands" (emphasis added). However, the FCC provides no legal authority for its false statement. To compound the situation, the FCC has refused to discuss the law or its own regulations.

As a preliminary matter, it is important to look at why does the FCC exists.

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47 U.S. Code § 151 – states the following:

“Purposes of chapter; Federal Communications Commission created

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, ... a rapid, efficient, Nation-wide, ... radio communication service ..., **for the purpose of promoting safety of life and property** through the use of wire and radio communications, ... there is created a commission to be known as the “Federal Communications Commission”, ... (emphasis added).

One will notice that the FCC was created for the purpose of “promoting safety of life and property” for “all the people of the United States”. The FCC was not created to merely protect the life and safety of “licensed Ham operators”.

47 U.S. Code § 301 provides that a “license” is required. Specifically,

“...No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio... except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.”

However, The term “station license”, “radio station license”, or “license” means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission. (emphasis added). See 47 USC § 153(49).

Thus, Licensed Ham operators must obtain a license from the FCC. Additionally, there are provisions for “license by rule”. In this regard, another radio service, “MURS is licensed by rule. This means an individual license is not required for an entity to operate a MURS transmitter if it is not a representative of a foreign government and if it uses the transmitter in accordance with the MURS rules outlined in 47 C.F.R. Part 95 Subpart J. There is no age restriction regarding who may operate an MURS transmitter.” (See FCC website <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/multi-use-radio-service-murs>)

Also, one can obtain a GMRS license by merely paying a fee. The FCC website at this link <https://www.fcc.gov/general-mobile-radio-service-gmrs> states: “An FCC license is required to operate GMRS system. Licenses are issued for a ten-year term and can be renewed between 90 days prior to the expiration date and up to the actual expiration date of the license.”

Further, Licenses are granted to applicants “if public convenience, interest, or necessity, will be served thereby ...” (emphasis added) (See 47 U.S. Code § 307 – Licenses). Again, Licenses are not granted for the benefit of a specific Licensee (e.g., for the “convenience, interest or necessity”

of only “Licensed Hams”) – rather it is the general “public convenience, interest, or necessity,” that is to be served by issuance.

The significance of the above is that a Ham receives an actual license. Whereas, a non Ham operating on for example the MURS radio service, doesn't receive a physical license, but is subject to “license by rule”. Thus, BOTH are subject to FCC rules as set forth below. Also, a GMRS license (for which one merely pays a fee to get license) is also subject to the FCC rules set forth below.

In my letter of February, 2021, which was provided to the FCC before our telephone conference, the matters below were set forth.

I explained that I had written to the FCC for “clarification” on specific matters [and] instead of addressing the matters in good faith, the FCC surprisingly has claimed that there is simply no provision in the rules for emergency use of the amateur band by unlicensed persons. In order to claim such an erroneous position, the FCC has had to totally ignore its own regulations and pretended that they don't exist.

Specifically, the FCC has advised “... Simply put, we recognize the important role that amateur operators play in emergency communications; however, **there is no provision in the Rules that would allow unlicensed use in the amateur bands.**” (emphasis added).

[I explained that] The FCC position is clearly in error.

The use of Non Ham use of the amateur bands is specifically authorized in emergency situations. Occasions for such use may be rare, but it is and has been critical to the saving of life and property.

[As stated in my letter] This issue is of critical public safety importance. Discussion follows.

1. This matter directly impacts the public safety (LIFE AND DEATH) of residents of Shingletown (and other areas), especially as it relates to the historic wild fire dangers threatening all of California.

2. Shingletown is at the top of the Cal Fire list of California Communities vulnerable to fire devastation. Shingletown is just like Paradise, California (which was completely decimated by the Camp Fire in November of 2018); is surrounded by forested areas, with housing susceptible to fire and the home of a large elderly population. In Paradise, people were trapped and died from the fire. The Shingletown Emergency Radio Plan is critical to providing emergency radio communications to those residents, including elderly and disabled, who are participating and who will join in the future. The next Wild Fire season [is already upon us].

3. The California State of Emergency Proclamation 9/28/2020- California Fires. is linked [HERE](http://www.shastadefense.com/9.28.20-Emergency-Proclamation.with.hiLghte.pdf) <http://www.shastadefense.com/9.28.20-Emergency-Proclamation.with.hiLghte.pdf>

4. Material as to the California Governor's declaration of a State Wide Emergency / Declaration of State of Emergency - 8/18/202 and 9/28/2020 - California Fires, is linked HERE

<http://www.shastadefense.com/2020.09.29.GovDeclStateOfEmerg.Fires.pdf>

5. Here is a link to the documentary about the Fire In Paradise (a situation Shingletown is attempting to avoid). <https://youtu.be/F3OX1PR2SCM>

6. Here is a link to a video of a family escaping the Camp Fire (a situation Shingletown Emergency Radio has been seeking to prepare for with respect to emergency communications). <https://youtu.be/amUW2NrA9S8>

7. Ham radio has in fact been used in Shingletown to protect life. Examples include:

a. A person riding a bike at a rate of speed had an accident on Highway 44, hit the roadway and smashed his head into an object. He was severely injured and unconscious. A person who was driving by stopped and gave him mouth to mouth resuscitation. As this was going on persons were attempting to reach 911 using cell phones without success. A Non Ham used his Ham radio on the scene to make a radio call on a local repeater which resulted in the Fire Department and medical units responding.

b. A smoke column was observed on the north side of highway 44 by a Non Ham. He did not have a cell phone or other means to call 911. He used his Ham radio to make a radio call on a local repeater which resulted in the Fire Department responding.

c. A vehicle rollover accident on Highway 44 resulted in a person being ejected from his vehicle and being thrown through the air about 30 feet before impacting the ground. There was no cell or other means of communication at the scene. A Ham radio call was made on a local repeater and a call to 911 was made. This resulted in emergency medical response to the scene. Additionally, a person with wilderness medical training heard the Ham radio traffic and responded to the scene about a half hour (or more) before any other medical response arrived.

d. Numerous other examples are available upon request.

[in my letter I further provided the relevant FCC regulatory rules]

8. The following provisions in the FCC Rules, clearly allow unlicensed use in the amateur bands.

9. Title 47, Chapter I, Subchapter D ,Part 97 of the Code of Federal Regulations provides as follows: Section §97.1 Basis and purpose.

"The rules and regulations in this part are designed to provide an amateur radio service having a fundamental purpose as expressed in the following principles:

(a) Recognition 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, ...** (emphasis added).

10. §97.101 General standards, provides:

"(a) In all respects not specifically covered by FCC Rules each amateur station must be operated in accordance with good engineering and good amateur practice.

(b) Each station licensee and each control operator must cooperate in selecting transmitting channels and in making the **most effective use of the amateur service frequencies**. No frequency will be assigned for the exclusive use of any station.

(c) **At all times and on all frequencies, each control operator must give priority to stations providing emergency communications,** except to stations transmitting communications for training drills and tests in RACES." (Emphasis added).

11. Further, §97.111 (a)(3) Authorized transmissions, provides:

"(a) An amateur station may transmit the following types of two-way communications: ...(3) **Transmissions necessary to exchange messages with a station in another FCC regulated service while providing emergency communications;...**" (emphasis added).

12. §97.111 (b) provides: In addition to one-way transmissions specifically authorized elsewhere in this part, an amateur station may transmit the following types of one-way communications: ... (4) **Transmissions necessary to providing emergency communications;...** (emphasis added).

Thus, Section 97.111 specifically authorizes an amateur station to engage in "two-way communications" "necessary to exchange messages with a station in another FCC-regulated service while providing emergency communications". Under this provision, a "Murs" station (Murs being another FCC regulated service, but no license being required) is permitted to use amateur frequencies while providing such two-way emergency communications.

13. Further, §97.403 Provides: "Safety of life and protection of property. **No 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.” (emphasis added).

14. Further § 97.405 Station in distress, provides:

“(a) No provision of these rules prevents the use by an amateur station in distress of any means at its disposal to attract attention, make known its condition and location, and obtain assistance.

(b) No provision of these rules prevents the use by a station, in the exceptional circumstances described in paragraph (a) of this section, of any means of radiocommunications at its disposal to assist a station in distress.”

A “Station” is defined as a station equipped to engage in radio communication or radio transmission of energy (47 U.S.C. 153).

15. Further, the FCC regulations provide that: “**At all times and on all frequencies**, each control operator **must give priority to stations providing emergency communications**”. (emphasis added).

16. Further, §95.1733 Prohibited GMRS uses (GMRS is another FCC radio service which issues a license upon payment of the required fee – but does not require a Ham Test for licensing – Thus, Murs is not Ham Amateur Radio), provides:

“(a) GMRS stations must not communicate ...

(9) Messages (**except emergency messages**) to any station in the Amateur Radio Service, to any unauthorized station, or to any foreign station...” (emphasis added).

17. In addition to the above, the ARRL’S general class Ham Radio Q & A text, used by those persons preparing for the FCC General Class Ham Radio License Test (Fourth Edition) states:

“G2B11 What frequency should be used to send a distress call?

A. Whatever frequency has the best chance of communicating the distress message

...

C. Only frequencies that are within your operating privileges ...”

In the explanation as to why “A” is correct the Text states:

“When normal communications are not available and the immediate safety of human life or protection of property is involved, all of the normal rules for an amateur

station are suspended so that you can obtain assistance. **This means that any method of communication, on any frequency,** and at any power output, **may be used to communicate and resolve the emergency.** It doesn't matter if the distress is personal to the station or a general disaster. Just be sure you have a real emergency!" [citing FCC 97.405] (emphasis added).

"G2B12 When is an amateur station allowed to use any means at its disposal to assist another station in distress?

- A. Only when transmitting in RACES
- B. At any time when transmitting in an organized net
- C. At any time during an actual emergency
- D. Only on authorized HF frequencies"

In the explanation as to why "C" is correct the Text states:

"No FCC rule prevents an amateur station from using **any means of radio communications at its disposal to assist a station in distress.**" [citing FCC 97.405(b)] (emphasis added).

"G2B02 What is the first thing you should do if you are communicating with another amateur station and hear a station in distress break in?

- A. Continue your communication because you were on frequency first
- B. Acknowledge the station in distress and determine what assistance may be needed
- C. Change to a different frequency
- D. Immediately cease all transmissions

In the explanation as to why "B" is correct the Text states:

"(B) **Whenever you hear a station in distress** (where there is immediate threat to human life or property), **you should take whatever action is necessary to determine what assistance that station needs and attempt to provide it.** Don't assume that some other station will handle the emergency; you may be the only station receiving the distress signal. **If you do hear a station in distress, the first thing you should do is to acknowledge that you heard the station, and then ask the operator where they are located and what assistance they need.**" (emphasis added).

In the above General Class License Text, it is clear that in an emergency, you are to take "whatever action is necessary". It is also clearly irrelevant as to whether the other party is licensed or not! In addition, as per the authorities cited, "any means of radio communication" includes making contact with a non Ham on a Ham radio frequency.

A fundamental purpose of the amateur radio service is public service "particularly with respect to providing emergency communications". There is no FCC qualification that the public service purpose ceases to apply just because the source of that emergency communication is from a person that does not possess a Ham license.

In Shingletown, efforts are continuing to implement a procedure whereby the Office of Emergency Services would use Ham Frequencies (and a specified calling procedure to Tone and awaken persons monitoring) to transmit emergency notifications, such as an evacuation due to a raging wildfire into the existing Shingletown Emergency Radio Plan. Under the FCC erroneous "position", if a Non Ham Sheriff Official attempted to transmit a mandatory evacuation order relating to a raging wildfire on the Shingletown Ham Frequencies, the FCC "position" would prohibit such emergency transmission. So, How Many Shingletown Residents (including elderly and disabled etc...) will die? How many are trapped in the raging fire? Imagine such a scenario where the Sheriff Official is told to get off the frequency because he is not a licensed Ham operator. Imagine if a Non Ham seeks to call in a new unreported wildfire from a location that has no other means of communication, and is told to get off the Ham repeater because he is not a licensed Ham operator. Imagine the same transmit prohibition in the case of an automobile accident where someone is going to bleed to death without immediate medical treatment.

At some point in time, someone needs to step back, read the FCC regulations in the spirit in which they were written, and use common sense.

The public service purpose of the amateur radio service, as it relates to emergency communications, is not dependent upon the source of the emergency communication (i.e., only licensed Hams can use Ham frequencies for emergency communications), Emergency communications, under FCC rules are to take priority over non emergency communications. The source of that emergency communication is not relevant.

During my February 2021 Telephone conference, the above legal regulatory authority was ignored by the FCC. They denied its existence, and refused to even discuss it.

The facts and law clearly show that the FCC Rules in fact allow emergency communications on the amateur band by non licensed persons in an emergency of the type as set forth herein.

It has been merely requested that the FCC acknowledge its owns rules so that further destruction of the established Emergency Communication Plan be prevented. Every day, we are subject to the risk of wildfires, and the false FCC statements have almost destroyed the only emergency communications system that works when all else has failed.

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Thank you.

[Hard copy signed]

ANZ: eaa jitiu

Very Truly Yours,

A. Nathan Zelif,
Attorney At Law

Developer and Director
Shingletown Emergency Radio Plan
Call Sign: K6PDS

FCC - urgent matter

From: Nathan Zelif (zlaw@taxsos.com)

To: rebecca.brown@fcc.gov; jim.balaguer@fcc.gov; erinmarie.ryan@mail.house.gov;
senator.dahle@outreach.senate.ca.gov; assemblymember.dahle@assembly.ca.gov; cruz_press@cruz.senate.gov

Cc: zlaw@taxsos.com

Date: Tuesday, July 27, 2021, 8:53 PM PDT

Please see attached letter concerning FCC not following its own rules, making false statements about the actual rules, and imperilling life and safety for California Areas subject to Wild Fires.

Nathan Zelif, Esq
530-474-3267



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