

Ham Radio - Emergency Use to Protect Life and Property

From: Nathan Zelif (zlaw@taxsos.com)

To: thomas.derege@fcc.gov; joshua.smith@fcc.gov; erinmarie.ryan@mail.house.gov

Date: Wednesday, February 10, 2021 at 09:46 AM PST

I look forward to our telephone call at 1:00 P.M. today (California Time). I have copied my Congressman in this matter.

Attached is a summary of the relevant FCC regulations.

Thank you.

Nathan Zelif, Attorney at Law



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81.3 kB

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EXHIBIT L Page 1 OF 7



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February 10, 2021

VIA e-mail

FCC

Attention: Thomas Derenge thomas.derenge@fcc.gov

Joshua Smith joshua.smith@fcc.gov

CC Congressman Doug LaMalfa CA-01 erinmarie.ryan@mail.house.gov
(530) 515-7135

RE: USE BY NON HAMS OF A HAM FREQUENCY DURING AN EMERGENCY
FCC CASE NUMBER: 819903

Dear Mr. Derenge and Mr. Smith:

Thank you for responding via e-mail to me. I look forward to speaking with you on the telephone at 1:00 P.M., Pacific Coast Time.

As you are aware, I have written to the FCC for "clarification" on specific matters. 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).

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.

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.

L Page 2

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 will be upon us very shortly.

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>

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.

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). (Concerning this provision please refer to my earlier communication dated December 17, 2020, together with exhibits thereto).

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:

L page 5

“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.

Accordingly, upon due consideration, I believe that you will agree that the FCC Rules in fact allow emergency communications on the amateur band by non licensed persons in an emergency.

Thank you.

Very Truly Yours,

A. Nathan Zeliff,
Attorney At Law

Developer and Director
Shingletown Emergency Radio Plan
Call Sign: K6PDS

ANZ: eaa jitiu

L Page 7 of 7