

## Is it Legal? When is it an Emergency

Just a few weeks ago while planning for a multi-jurisdictional Y2K exercise with KY Division of Emergency Management and several power companies of Ky. The question again arose... Is it legal for us to help power companies who charge customers for their electrical power, in such an exercise. Instinctively I answered, YES, as I have studied this very carefully for nearly 20 years as a ham who is interested in emergency communications as a primary part of amateur radio.

In fairness to the amateur who raised the question and knowing that I am not infallible, I then queried the ARRL and the Federal Communications Commission regarding this. The latter of which received a detailed description of what we planned as well as hypothetical examples of situations we had not factored into the exercise itself. This in some detail is their reply.

All emergency communications are legal. In Part 97, Sub Part E we find under 97.403 the statement that..."No provision of these rules prevents the use by an amateur station of any means of radio communications at its disposal to provide essential communication needs in connection with the immediate safety of human life and the immediate protection of property when normal communications systems are not available."

"Fine," you say, "that is for disasters, but what about exercises and public service events." O.K., let's look at it from that angle.

Again at Part 97.401, we read a statement saying, "...or is likely to occur". Planning and exercising is done by emergency management for things that are "likely to occur", within a specific area. Ever see any volcano, typhoon or hurricane drills in Kentucky? That is because they are not likely to happen here. We, as responsible amateurs, must train with the served agencies and be prepared to step in and know our jobs in assisting these organizations in times of disaster. But, what about those businesses, they sure turn a profit! Isn't our providing communications for them an illegal act.?

Yes, very true, business communications ARE expressly forbidden within the amateur radio service. If routine business communications were allowed any business could license it's employees and swamp the 2 meter band with repeaters and continuous communications. No, the amateur questioning the legality of helping power companies was right about one thing, as James Roop of the FCC pointed out in our communications, you can not use your station or equipment to facilitate the day to day routine business or commercial affairs of any party or as an alternative to other authorized radio services, except ...as necessary to providing emergency communications. Note the words "any party". The FCC rules make no distinction between for profit and non-profit businesses.

Our drilling with them or any other essential service to communicate with emergency officials or in simulating restoration of their essential service in a mass outage situation is not, ROUTINE COMMUNICATIONS. If we were to ride around with them reading electric, gas or water meters or any other day to day task then, YES, we would be operating illegally.

As stated in the original series..."You can assist a 10 mile race sponsored by the food bank or a for profit business when your investment is for the primary benefit of the general public, even if there is an incidental benefit to the sponsor. For example, where the communications are related to the safety of the attendees and participants, the primary beneficiary is the general public not the sponsor of the event."

Who suffers if power, telephone, water or other vital service is down for days or weeks in a disaster, THE GENERAL PUBLIC.

The key words to define an emergency are, immediate safety of human life and the immediate protection of property when normal when normal communications are not available. Obvious examples of an emergency include natural disasters such as tornadoes, hurricanes, blizzards, floods and other forms of severe weather, forest fires, landslides and earthquakes.

These typically cause immediate danger to life and property and outages of normal communication such as telephone and public safety radio systems. According to the Federal Communications Commission's James Roop, in our recent conversation, exercising with any agency for these same communications is also legal just so long as we do not provide communications for their every day business concerns, then our operations are quite legal.

Under these guidelines, assisting the Forest Service during a wildfire, allowing a physician to use your radio or performing Red Cross disaster assessment are all legitimate amateur radio operations. Let's say you spot a motorist, stranded along a suburban highway. Can you call for help on the repeater autopatch. At first this hardly seems like an emergency but it may be a real danger to the stranded motorist. In 1988 a San Francisco Bay Area mother and her daughter were killed when their disabled automobile was struck from behind. They were parked well off the right side of the freeway, emergency flashers on, hood up and in open daylight. Could you have called for a tow truck? Absolutely.

At the scene of an accident, can you hand your radio to an unlicensed person such as the fire chief?. Absolutely, as long as you remain the control operator. This is merely standard third party operation. In fact this is generally the most efficient way to provide communications to an agency during an emergency. Rather than relay the information yourself why not put the sender and recipient on the radio. This eliminates errors and is much more efficient.

#### Now with regard to Public Event Communications

The FCC encourages activities within amateur radio. However much of the confusion over ham radio public service communications stems from a confusing report and order issued by the FCC in 1983 and from a letter written to the FCC in 1984 regarding support of the New York City Marathon.

One of the purposes of amateur network had been to inform the general public and possibly the news media, of the race status via a public address system at each mile marker. The FCC stated that using amateur radio for this purpose is prohibited by the rules. The FCC replied that reporting the position of lead runners via the amateur network and the public address system ran afoul of the prohibition on broadcasting to the public. But contrary to widespread belief the FCC did NOT prohibit amateurs from assisting at events where there are paid participants.

Acceptable activities, the FCC wrote, are not determined by the profit objectives of the sponsor, not the pay status of other participants. Although some transmitted communications could incidentally benefit a sponsor, we do not view such communications as violations of the rules where their main purpose is to provide a service to the public.

Further, and again contrary to popular opinion, the FCC did NOT rule that, in general, it is illegal to transmit lead runner position reports. At many races, the race director needs to know the positions of the lead runners, the pack and the last runners so he can correctly position the first aid, ambulance and water support crews. If that is the purpose of the lead runner reports, then this function is in the interest of the runner and spectator safety and is a legal function of the amateur radio service. Broadcasting reports for spectator and media information was not.

Two additional items that are worthy of covering in this material are the Use Tactical Call signs and financial compensation.

Tactical Call signs are often used when working with other agencies during an emergency or during large public service activities. For example, during a running race, names like finish line, mile 1, mile 2, First Aid 1 and water truck quickly identify each function and eliminate confusion when working with other agencies such as fire departments, where amateur Call signs are meaningless. The use of tactical Call signs in no way relieves the operator from the obligation to properly identify their station according to FCC rules.

Can you receive payment for you amateur radio assistance? No. The FCC regulations prohibit payments for the use of an amateur radio station. This rule does not prohibit you for being reimbursed for incidental expenses unrelated to your radio communication. If you assist a disaster scene 100 miles from your home you are not prohibited from receiving reimbursement for out of pocket travel expense unrelated to your radio communication. For example, if as an American Red Cross Disaster Services volunteer you are flown to the scene of a disaster where you happen to use amateur radio as part of the relief effort, you would not be required to pay your own airfare.

Hopefully this has answered some questions about legal use of amateur communications during exercises, disasters and other gray area situations. Through this type of public service use, we justify the privilege of being an amateur operator and because of its usefulness amateur radio may remain a part of our lives and those of us yet to come far into the distant future.

Source: Kentucky Amateur Radio Web Site – [www.kyham.net](http://www.kyham.net)