

AE4FB seeks further clarification of Part 97 from the FCC. In particular, AE4FB asks for a ruling which would give him the authority to evict other spectrum users from entering a round table conversation, based solely on their personalities, opinions, political or religious beliefs, race, ethnicity, and other arbitrary and capricious, and obviously discriminatory criteria. AE4FB believes he should have the exclusive right to control who may speak on a given frequency at any given moment. Herein, is an analysis and opinion, based on the work of several noted communications attorneys.

### **§ 97.3 (4) Definition of the Amateur Service**

**A radiocommunication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.**

Here we learn that the amateur service is about communicating with others, plus, self-training and technical investigation. Intercommunication is a basic part of the service, and it's defined by Merriam-Webster as follows:

Definition of INTERCOMMUNICATE

1: to exchange communication with one another

2 : to afford passage from one to another

Related Words: correspond; converse, talk; message; bond, commune, relate; accost, approach, contact

### **§ 97.101 General standards.**

**(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.**

Note: We're fairly certain "good amateur practice" does not include singing, whistling, playing the Shaman drum, or playing rap or country music over the air in order to interfere with others. Nor does "good amateur practice" include encouraging others to interfere (e.g., Jesse James) nor does it include offering to buy guitar strings for pirates, as AE4FB has done. All of these incidents are in fact, specific violations of Part § 97.113 (4).

**(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.**

Note: "Cooperation" means AE4FB must cooperate with others. The fact that no frequency is exclusively assigned means AE4FB is not allowed to act as the defacto dictator, excluding other licensed stations from round table conversations. "Making the most effective use" refers to the fact that a large group using a frequency is a more efficient and effective use of spectrum than a small group using a frequency. Clearly, § 97.101 (b) means AE4FB is specifically prohibited from claiming an exclusive right to a frequency. Significantly, AE4FB's continual refusal to cooperate is a specific violation of Part 97.101(b).

**(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.**

In § 97.101(c) we learn that the only stations given priority are stations engaged in *actual* emergency communications, ergo, AE4FB's roundtable is not afforded any special protection from others wishing to share a frequency he occupies, and again, 97.101(b) specifically states NO FREQUENCY IS ASSIGNED TO ANY STATION (emphasis ours).

Although AE4FB would like to believe his roundtable is an exclusive, private club where he is the major domo, bar tender, and bouncer, and although AE4FB would like the FCC to protect his frequency from dissenting opinion, the law is clear. The frequency does not belong to AE4FB and if he wishes to maintain an exclusive frequency allotment, complete with music and call-ins from unlicensed members of the public, AE4FB must obtain a shortwave broadcast license.

**(d) No amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.**

It is unfortunate that there is no cogent, understandable or legally-permissible rationale for distinguishing between so-called "intentional interference" under 97.101 (d) by a station wishing to participate in a QSO versus a finding that the station objecting to that station's participation is instead violating 97.101(b) by refusing to share the frequency in question. However, that is the situation in which we find ourselves.

If entering a conversation is illegal, then every conversation over amateur radio is illegal. "Interference" is specifically defined under § 97.3 (23). The definition of willful, deliberate, and malicious interference has never been defensibly construed to include a station merely seeking to enter into a conversation while using his or her assigned call sign. To consider entry as an act of "interference" would render all communication illegal on the amateur bands. Rather, "interference" (under a rubric of common sense and common meaning) must refer to music, sound effects, splatter, noise-making, distortion, jamming, harmonics, and other similar acts which are specifically prohibited under Part 97, which are both willful and deliberate, and which *seriously* degrade, obstruct, or repeatedly interrupt other spectrum users. Obviously, serious degradation, obstruction, and interruption, are all subjective and imprecise terms worthy of more discussion - and replacement - in favor of terms employing more precision and exactitude. For example, one man's "interruption and obstruction" is another man's enjoyable conversation.

**§ 97.3 (23) Harmful interference. Interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with the Radio Regulations.**

Fortunately, Executive Orders 13563 and 13579 have mandated that Federal Agencies must remove conflicts and confusing language from their rules and regulations and they must do so in a timely manner. This includes, not only the definitions of interference and exclusive use, but also the definitions of obscenity, profanity, and other so-called language violations, which are currently unsupported by the Supreme Court, but still officially included in Part 97. While we wait, the conversation continues.

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**References:**

- + Part 97 at <http://tinyurl.com/l8y56v8>
- + Executive Order 13579 at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-28.pdf>
- + Executive Order 13563 at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>
- + Myron Henry Premus 17 FCC 251 (1953) and Richard G. Boston, July 29, 1977.
- + Memorandum Opinion and Order of Safety and Special Services Bureau Chief Charles A. Higginbotham.
- + Red Lion Broadcasting v. FCC, 395 U.S. 367 (1969).