

Comments on OET 17-215 Technical Inquiry into Reforming Technical Regulations

The FCC is seeking useful comments on procedural and regulatory matters on a variety of issues to update obsolete rules and increase efficiency.

1. I wish to offer a suggestion on the use or possible misuse of the ECFS petition and comment system. It appears that frequently there are redundant petitions for rule making that repeat past or current FCC actions. **My request is that a screening process be established for petitions for rule making.** An FCC clerk or paralegal should be assigned the task of briefly reviewing the new document and comparing it to current open rule making actions to see if there is sufficient duplication or common issues to warrant “bundling” of the proposed new request with existing actions. Also, this FCC officer would briefly review past FCC actions to ascertain if the new request has already been ruled on in the past. If current circumstances have changed from the time of the original previous rule making, perhaps it is appropriate to revisit the issue. **If not, the new petition should NOT be issued a formal RM number until a decision is made about whether the new action is warranted.** If the petitioner is denied a rule making number and action, he would have some appropriate brief method of appeal to show cause why his petition is unique and worthwhile of consideration. In the event of revisiting a past rule making issue, the new petitioner would be able to present current information that shows what has changed since the last ruling. This would save the FCC time, money, and effort. It would also save others time and effort in filing comments to prevent an unnecessary rule making procedure from causing undesirable outcomes.
2. It appears that some petitioners over use the ECFS to initiate rule making proceedings that have already been resolved by past FCC actions. Whether these are deliberate “**abuse of procedure**” (a legal term) or just failure to do adequate research, there should be a limit to an individual filer's ability to cause “**burdensome**” activity. Perhaps the first instance would result in a written warning. Subsequent deliberate instances could carry a suspension of petition privileges; a first offense after warning might be 6 months, with escalation for later problems. This would address an ongoing issue that seems to have gotten worse since the FCC made it easier to file through the ECFS. On the one hand, it has improved access to the process and made it simpler for the public to participate in governmental processes. On the other hand, it has complicated the task of the FCC by making it easier for those who consider incessant tinkering with FCC regulation a hobby, and they engage in legally “vexatious” behavior. There is a precedent and procedure for dealing with this problem. A definition is provided at: <https://legal-dictionary.thefreedictionary.com/Vexatious+Litigation>

“The U.S. legal system permits persons to file civil lawsuits to seek redress for injuries committed by a defendant. However, a legal action that is not likely to lead to any practical result is classified as *vexatious litigation*. Such litigation is regarded as frivolous and will result in the dismissal of the action by the court. A person who has been subjected to vexatious litigation may sue the plaintiff for [Malicious Prosecution](#), seeking damages for any costs and injuries associated with the original lawsuit. Litigation is typically classified as vexatious when an attorney or a pro se litigant (a person representing himself without an attorney) repeatedly files groundless lawsuits and repeatedly loses. Under the [Common Law](#), the frequent incitement of lawsuits by an attorney constituted the crime of [Barratry](#). In modern law, however, barratry is viewed as an archaic crime and is rarely enforced. Attorneys who encourage vexatious litigation are subject to discipline for violating rules of professional conduct and may be suspended from the [Practice of Law](#) or disbarred.”

3. An example of a red flag for this sort of repetitive or unproductive filing are if the petitioner previously has **voluntarily withdrawn a petition**, after a rule making (RM) number has been assigned, and a lengthy comment period has elapsed. In particular, in such cases, frequently many commenters have filed AGAINST the petition, making it clear that the petition is not in the public interest or causes other regulatory problems. Realizing that, the original petitioner has withdrawn the ill advised action. This wastes FCC resources, as well as those of the commenters. This should trigger extra scrutiny as described above in paragraph 2.
4. Another example of a red flag would be the **FCC denying in a Report and Order a previous petition which is essentially similar to the one being requested.**
5. I am not commenting on a rare happenstance here. The FCC has often had to deal with this real world problem. I am sure you can find many instances in FCC records. As just one **example**, I offer the **FCC's own report and order, DA 17-11**. This rejected petitions by Whedbee (RM-11769) and Siegell to merge or upgrade certain classes of amateur operator licenses without an exam. The FCC has maintained since 1999, indeed since the late 1960s, that the principle of incentive licensing rejected this idea. In 2005 the FCC again stated that it was not “in the public interest to grant these licensees privileges that they could obtain by passing the examination elements for the higher class licenses.” **I specifically assert that the license class and privilege discussion in RM-11759 also falls under the “red flags” I pointed out in paragraphs 3 and 4 of this comment.** The ARRL asserts in RM-11759 that the FCC made a “mistake” ten years ago. **If there was any mistake, it was possibly in not ruling at that time, that the Novice Class license could not be renewed after it expired after its 5 year term.** The original Novice license was NOT renewable. **In any event, there should be no “free upgrades” for an obsolete license.** Here is a link in the FCC's own database to this issue: https://apps.fcc.gov/edocs_public/attachmatch/DA-17-11A1.pdf
6. I am following these guidelines set forth in the FCC OET 17-215 by this comment: “In addition to obtaining comments on specific regulations, the TAC solicits **input on how the regulatory process can be made more efficient and timely.**” “Processes to resolve competing interest” **“How can FCC work processes best be improved?”** While some of my comments here are not specifically technical in nature, it surely has regulatory and serious technical implications. Its intent is to improve efficiency in the system by eliminating wasted resources in the rule making process.
7. In OET 17-215 instructions, it states: **“On the other hand, some communications users may feel that certain existing regulations protect their operations and should not be removed.”**
8. **In particular, I also am requesting a technical regulation be retained:** the FCC's own stated purpose in the example I presented of DA 17-11 of **“The Commission concluded that the three-class structure would streamline the licensing process while still providing an incentive for licensees to advance their communication and technical skills.”** My comments presented here are in agreement with: **“Regulations that should be retained because they promote competition, protect incumbents from interference, regulate unlicensed frequencies, are necessary to comply with international agreements, or support the purpose of the FCC.”**

9. **The target audience for any new entry level HF license would likely be a budding "maker".** He will be building something or adapting an existing device to his needs. **Possibly a technician license will be sufficient for him to control a robotics experiment.** Software defined radio is an attractive medium, with the opportunity to experiment with the hardware and software. This is the correct young person target audience we should address, because they are interested in working with RF. Maybe they will also be interested in HF radio. They will make contacts, perhaps using the new narrow band low power mode, FT8. Maybe they will improve on FT8. Those contacts will be with other ham operators. They will be mentored and assimilate into the amateur radio culture. **They will possess the technical skills required to make a meaningful contribution to the state of the art, and verify those skills by a meaningful exam. A "maker" should possess the skills to MAKE SOMETHING. I insist that level of competence is demonstrated by passing a General Class Amateur exam.** The following quotes from FCC 06-178 from 2006 summarize this perfectly. There is no demonstrated need for changing that policy now: https://apps.fcc.gov/edocs_public/attachmatch/FCC-06-178A1.pdf

"Additionally, we are declining ARRL's request that Novice and Technician Class licensees be given voice and image privileges in certain segments of the 80, 40, 15 and 10 m bands.... However, we are concerned that giving Novice and Technician class licensees voice privileges in the other HF bands would be a disincentive for these licensees to improve their knowledge and skills and attain a higher class license. Passing the thirty-five question written examination for the intermediate class of license --the General Class-- is well within the capability of most, if not all, Technician and Technician Plus licensees, particularly given the study guides and other aids available from, among others, the ARRL.. ARRL requests and removing most of the "reward" for passing the examination.."

I maintain the same logic applies to extending digital mode privileges to any class below General, in particular, operation and use of wide band ACDS for email. Perhaps there is a modern justification for allowing a new style Technician license narrow band "non ACDS" human to human modes such as FT8 in their portion of the HF CW/DATA allocation, but not in the "remote control" or "ACDS" segment.

Most of this conflict revolves around the interaction between "ROBOT" stations with no actual human at the controls. The ultra wide band widths these users are advocating make are not useful for human to human contacts, which respect "Listen Before Transmit" protocol. Ultra Wide Band modes as FCC WT 16-239 would allow, should be confined in a separate band segment specifically for "ROBOT" stations, now styled ACDS (or a legally vague definition of "remote control" which is essentially identical) regardless of their band width of emission. Under no circumstances should Novice or Technician Licensees be permitted this type of emission on HF. This should be only allowed for General class or higher, if allowed at all on HF.

Accordingly, I request that the FCC establish separate HF band segments for "ACDS" and so called "remote control" data stations separate from the current CW/DATA and VOICE/IMAGE segments. These "ROBOT" store and forward email repeaters should only operate in that band segment, regardless of band width of emission.

Besides the “listen before transmit” problem, there is an issue of de facto encryption in that a normal human cannot discern the nature of the signal, and cannot verify whether it is a legitimate “emergency” signal or monitor it to verify that the content is legal. This is the case, even if you happen to own an expensive SCS modem, which operates on proprietary undisclosed code in Pactor modes 2, 3, and 4. Whether the encryption is intentional or an effect of the digital encoding and compression is moot; it is in fact impossible to decode by any reasonable means available to Official Observers or FCC enforcement officers. It is also extremely difficult to obtain even the call letters of the station.

This problem has been addressed some time ago by **Bruce Perens** in comments on FCC RM-11699: <https://ecfsapi.fcc.gov/file/7520929151.pdf>

“42. Encryption Creates a Special Class. **Under the proposed regulations, when an Amateur hears an encrypted communication on Amateur frequencies, they will have to assume that it is an emergency communication.** They won't be able to verify its nature on their own without the encryption key. They won't be able to break into the communication to ask the operator what's going on, because encryption locks them out. **Their only choice will be to vacate the frequency, for fear of interfering with an emergency communication.**” “36. **For Amateur self-enforcement to work, Amateur volunteers must be capable of receiving the message so that they can verify that the content is lawful.**”

The full discussion of this and other problems caused by FCC WT 16-239 as currently worded are covered in an ex parte presentation by Ted Rappaport:

<https://ecfsapi.fcc.gov/file/10925839109476/FCC%20exparte%20letter%209%2025%202016.docx>

<https://ecfsapi.fcc.gov/file/10925839109476/FCCNPRM%20Docket%2016-239%20Final.pptx>

<https://ecfsapi.fcc.gov/file/10925839109476/Winlink%20compilation%20pt1.pdf>

<https://ecfsapi.fcc.gov/file/10925839109476/K7NHV%20Winlink%20Handout.pdf>

<https://ecfsapi.fcc.gov/file/1092719005718/Winlink%20Compilation%20pt2.pdf>

<https://ecfsapi.fcc.gov/file/1092719005718/exparte%20September%2026%202016%20attachment.docx>

I urge you to carefully review Ted Rappaport's extensive research before proceeding any further with WT 16-239.

10. Emphatically, I state that we do NOT need to dumb down the exams for anyone simply seeking to dodge charges for common carriers, by sending commercial content email by amateur radio, who will never assimilate into our hobby. These are NOT interested in "experimenting and advancing the state of the radio art" (one of the stated goals in FCC Part 97). **And they will not have or ever develop the skills necessary to do so.** They may have a legitimate need - better and more affordable global internet connectivity - which the FCC and global corporations need to address in the commercial radio spectrum. But **amateur radio was NOT a commercial email service (a common carrier) at its inception, nor should it ever become one.** Hams definitely do not need a new group who does not understand "**listen before transmit**" (the bedrock of a shared spectrum) or proper adjustment of transmitters to avoid spurious output. To someone only interested in pressing "send" for their email, ham radio is just an AP or an appliance, Internet CB. **The FCC needs to establish a separate "Internet CB Service" to serve Alaska, boaters, and other under-served populations as a "common carrier" for email and internet.**

11. Here is a comment in the FCC's own data base <https://ecfsapi.fcc.gov/file/7521315143.pdf> from an advocate of ham radio free email. Is this what the ARRL is promoting?

"To: FCC – RM-11708: The sailing forms are all encouraging us to file comments in support of RM-11708. This is my first filing and if I mess this up, please see SailNet Forum at: <http://www.sailnet.com/forums/general-discussion-sailing-related/111746-us-citizensurged-support-fcc-rm-11708-a.html>

I have experienced very dependable service from the amateur radio Internet Winlink system. Its a great service because all of the other available Internet services cost money. Even when I am topside cruising (sic) the system runs automatically below deck publishing my position reports and downloading my email. I use the system for sending position reports, ordering supplies, repairs, chatting with friends and posting to facebook. My only complaint is that it needs to be much faster. I am not a amateur radio operator yet but a friend lets me use his call with a SIDD on the end. I hope to get my own ham call soon.

From what I read on the sailing forums, RM-11708 will allow Winlink eMail to run twice as fast. That is great and I am for that. Some of the technical folks are saying that if RM-11708 is published with no bandwidth we can get even faster Internet and might be able to stream movies on the Winlink Internet. I'm for passing RM-11708 into law with no bandwidth limits." - Randal Evans

12. **I also request the FCC NOT enact WT 16-239 as currently written, which will abolish any band width limits on DATA emissions.** This is contradictory to international regulations and the FCC's own part 97 rules on VHF and UHF band width for DATA. See filing: <https://ecfsapi.fcc.gov/file/1005214251324/FCC%2016-239%20DISMISSorSTAY1.pdf>

I appreciate this opportunity to contribute to improving the ECFS procedures, and to request that the FCC continue to honor its regulatory authority and continuing commitment to the Amateur Service.

Respectfully submitted,

/S/

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Timely filed, October 27, 2017 by ECFS