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The Secretary
Federal Communications Commission
Washington, DC 20554

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FCC MAIL BRANCH MAY 14 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Sir (or Madam):

The enclosed Proposal for Rulemaking, in response to two previous proposals filed by Mr. Scott Leyshon, WA2EQF, on 2 June 1992 and 12 April 1993 for either establishing a no-code, no-theory license for all classes of the Amateur Radio Service, or reestablishing a return to technical standards, requests that the Commission:

(1) Restore the demanding technical examination standards that existed prior to 22 November 1967, the start of the ARRL/FCC "Incentive Licensing" program

OR

(2) Redefine under Part 97.1 the modern goals and purposes of the Amateur Radio Service.

Very truly yours,



Vincent Biancomano
WB2EZG

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MAY 14 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of PROPOSAL
to reestablish examination standards
for all radio license classes of the
Amateur Radio Service; or, to redefine
under Part 97.1, the modern goals and
purposes of that Service

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Introduction/Summary

The Commission previously denied a 2 June 1992 petition filed by Scott Leyshon, WA2EQF requesting a no-code, no-theory license, on the grounds that such conditions for establishing such a license had not been shown to exist. A petition dated 12 April 1993 was re-filed by Mr. Leyshon, apparently in response to the Commission's request for additional information. Whereas the Commission did not dispute the basic arguments advanced in the initial petition of 2 June, as noted by Leyshon in August 1992 and this petitioner on 18 November 1992, notably that:

- (1) Amateur radio is no longer promoted as a technical hobby
- (2) Private/commercial services provide emergency services to the public in times of disaster as effectively as amateur radio operators
- (3) Statements made by former PRB personnel connect amateurs' rejection of the 1982 FCC-proposed, no-code license with loss of VHF spectrum
- (4) FCC's reclaiming of more than 100 MHz of amateur spectrum indicates a weakening of the Amateur Radio Service's ability to justify its frequency allocations
- (5) The Amateur Radio Spectrum Protection Act is flawed, and would offer amateurs no true protection against reclaiming of its frequencies without due compensation

then, this petitioner, having found the crux of the arguments presented by Leyshon to be in all respects valid, requests that the Commission:

- (1) Formally restore examination standards to the Amateur Radio Service in order that amateurs have a solid basis by which they can

uniquely justify their present frequency allocations, or

(2) Formally declare the terms under a new Part 97.1 by which the Amateur Radio Service can justify its present frequency allocations without fear of encroachment by commercial interests; and, in the absence of an effectively written Spectrum Protection Act, to ensure that all future reclaiming of amateur frequencies will not be initiated without due compensation.

Supporting Documentation

The documentation provided in the 28-page petition of 12 April for a no-code, no-theory license by Scott Leyshon, WA2EQF, has after careful inspection by this petitioner been found to be essentially without flaw both with regard to basic content and chronological occurrence. Of particular note:

1. The petitioner concluded correctly that the Commission had not directly addressed the points made in his petition for a no-code, no-theory license of 2 June, the Commission "electing instead to restate the points made therein in its own terms."
2. The quote attributed to former PRB Chief Foosaner regarding the relationship between amateurs rejection of the no-code license, and loss of amateur frequencies, is accurate.
3. The section "Background and Recent History" with respect to events and their order of occurrence is correct.
4. The section "Counter-Evidence to the FCC Position for Easing of Requirements" with respect to per-capita information, lack of demonstrated amateur support, and the Americans with Disabilities Act, is virtually correct with respect to the numerical data, and supplies strong evidence with respect to the last two categories in support of the petitioner's request.
5. The petitioner has successfully underscored the link between points (1) to (3), the loss of frequencies, and the need for the Amateur Radio Spectrum Protection Act.
6. Information provided in the Appendices, particularly Appendix III with respect to weaknesses/inconsistency in the FCC-decision making process and legal considerations, has provided significant evidence to support the petitioner's request for either restoring examination standards; or, in the absence of a no-code, no-theory license, a need to re-define the goals and purposes of the Amateur Radio Service.

A recent Proposal for Rulemaking by the Commission in mid April for further sharing of the amateur 900 MHz band, demonstrates an additional degree of credibility with respect to petitioner Leyshon's concerns for the Amateur Radio Service's ability to justify its present frequency allocations.

Therefore, the Leyshon document of 12 April is offered in its entirety in support of the need for the Commission to (a) formally restore examination standards in order that the Amateur Radio Service have sound justification for retaining its present frequency allocations; or, (b) declare in clearly stated language in a new Part 97.1 the modified purposes and goals for the Service. In this way, the Service will be provided the groundrules upon which the service can retain its present frequency allocations without fear of encroachment by competing commercial/industrial competitors. (The document filed by Leyshon, now in the hands of the Commission, is indeed referenced rather than included with this petition for reasons of environmental efficiency; it will, however, be provided if the Commission so rules.)

It is well noted that the document filed with the Commission on 12 April by Leyshon has unfortunately called the present petitioner's comments to attention in Appendix I, and comments made therein may not have been regarded as complimentary to personnel in the Personal Radio Branch. Unfortunately, given the nature of the present proposal, no retraction of any portion of Appendix I in the Leyshon proposal of 12 April can be offered by this petitioner.

Additional Documentation

a. Weaknesses in the Spectrum Protection Act

While the Commission may argue that the Amateur Radio Spectrum Protection Act, originally sponsored by Jim Cooper (HR-73) and Al Gore (S-1372), will offer amateurs sufficient protection of their frequencies, in which case there is no need to address the points made in recent petitions by Leyshon or this petitioner, the evidence indicates that the Commission does not approve of the aforementioned Spectrum Protection Act because it challenges the Commission's authority for unilateral reclamation of amateur frequencies. Further, the cornerstone assumptions upon which the Spectrum Protection Act are based are, in fact, technically incorrect. In order to provide the bill with the best possible chance of success through Congress, and largely to ensure it can withstand any unforeseen opposition by commercial/industrial interests, the bill would need be modified in four areas. More specifically,

1. The Congress incorrectly observed in Sec. 2 (a1) of S.1372 that

amateurs are licensed after..."a thorough examination in...technical principles of radio communications..." Regrettably, decisions by the FCC during the last decade to deregulate the Amateur Radio Service, coupled with recent actions that have removed more than 100 MHz of spectrum, provide strong indication that the FCC (a) rather prefers a personal **non-technical** radio service akin to Class-D Citizens Band, and (b) no longer regards amateur radio in high regard and as a hobby worthy of their direct concern. Indeed, much of the problem regarding our loss of frequencies may be directly attributed to the relaxing of technical standards required of radio amateurs, even at the highest license classes. As indicated by petitioner Leyshon, radio exams (unfortunately, no longer administered by the Commission), are an exercise in rote memorization, with the exact technical questions and their answers periodically placed into question pools that are published and available to prospective amateurs or amateurs wishing to "upgrade" to the next license class. Examination by rote is indeed a major factor why amateur radio has been weakened as a technical hobby. Less than 13 percent of radio amateurs over all license classes correctly understood the meaning of a fundamental electrical unit, the Volt, in a limited study of 205 amateurs this petitioner conducted seven years ago (Appendix I, Leyshon petition). Thus it is clear that the aforementioned observation made in S.1372, Sec. 2 (a1), cannot, unfortunately, be substantiated.

2. While one of the basic purposes of the Amateur Radio Service is to provide emergency communications as noted in S.1372, Sec. 2 (a3,4), *it is not the primary purpose. Nor, in any case, can amateurs justify all the frequencies they now hold based on what they provide in emergency communications*, a fact that unfortunately is known well by the Commission as well as the various commercial/industrial lobbies. Technology and its distribution, both in the U.S. and the world, has provided many volunteer and commercial organizations with portable radio equipment and the ability to communicate in times of emergency. Amateurs' effectiveness in this regard, although not particularly diminished in the mercifully few instances where their aid is required, does in many cases place the amateur community in a somewhat redundant position for the service it provides. Again, the Amateur Radio Service cannot justify all our frequencies based on the premise of emergency communications.

3. Three of the five reasons for the existence of the Amateur Radio Service, as stated in FCC's Part 97.1 of the Communications Act, is as a *technical training ground*. Clearly, amateur radio was not designed to compete against commercial interests on the basis of economic market considerations. However, amateur radio is the only hobby presently capable of performing a unique service in the area

of education on a national level, and its stated mission would appear to fit in perfectly with a national goal to attract youth to technology and the fundamental sciences. Unfortunately, the move to deregulate the Amateur Radio Service has quite obviously weakened its reason for being. While education is not a prime concern of HR-73/S-1372, it is apparent that the bill could not be effective until Congress recognizes amateur radio's value as a technical learning ground for youth. If it has been part of the agenda of the FCC to allow idle chatter and emergency communications to become the mainstay of the Amateur Radio Service, rather than learning and experimentation, it then follows that the concerns of radio amateurs for their frequencies have become a low priority for the Commission.

4. Sec. 3 (a2) of S.1372 initially provided radio amateurs no recourse to FCC decisions regarding "equivalent replacement spectrum" in the event that frequencies must be reclaimed by government in the public or national interest (at this time, it is not clear if this flaw has been satisfactorily addressed). *First, the term "equivalent replacement spectrum" was not defined in the original draft of HR-73/S-1372. Second, given no independent committee for overseeing various FCC actions in disputed cases, the basic provisions of HR-73/S-1372 simply could not be enforced by Congress.*

5. The Amateur Radio Spectrum Protection Act is a small part of a larger Spectrum Protection Act for industrial interests in Congress and the Senate, but various industrial interests have not been receptive to it. Delay of the passage of the larger Act has thus delayed progress of the elements regarding the Amateur Radio Service.

To summarize, the Amateur Radio Spectrum Protection Act has afforded the Amateur Radio Service no assurance with respect to protection of its present frequency allocations.

b. Recent Response by Commission Staff

Recent information would indicate that Commission personnel would not under any conditions consider the merits of the proposal of 12 April, given the evidence to demonstrate the Personal Radio Branch's leadership role to secure further easing of requirements for an amateur radio license. More directly, statements attributed to Chief John Johnston at the 1993 Dayton HamVention in April indicate that petitioner Leyshon's purpose in filing the proposal for a no-code, no-theory license was because "amateurs are no longer interested in technology."

On the contrary, the Leyshon proposal of 12 April neither contains or implies such a statement. It is clear from the Leyshon document

that the petitioner requests the Commission clearly state the conditions (under an enforced Part 97.1, or a newly defined Part 97.1), that will ensure amateurs be able to retain their present frequency allocations without fear of constant encroachment from commercial interests.

Conclusion

In the letter of *Comment* on 18 November 1992, this petitioner applauded the Commission's decision to reject the petition for a no-code, no-theory license filed by Scott Leyshon on 2 June, but noted the weakness in the Commission's response in not addressing the issues brought out in that petition. The documentation provided in the re-filed petition of 12 April by Leyshon for a no-code, no-theory license to meet the Commission's requirements for additional information, now provides rather conclusive evidence of decay in the Amateur Radio Service brought about by the easing of technical requirements for obtaining an amateur license. Given that

1. the petition of 12 April has been found by this petitioner to be virtually without flaw, with respect to both content and chronological accuracy
2. the Commission has offered the Amateur Radio Service no assurance that it can retain present or equivalent-spectrum frequency allocations devoid of constant challenge by competing commercial interests
3. the flaws in the Amateur Radio Spectrum Protection Act do not protect amateurs against reclaiming of its present frequency allocations,

sufficient justification exists for the Commission to restore technical standards to the amateur radio licensing process in order that the Amateur Radio Service justify its frequency allocations as a technical hobby; or, on the other hand, for the Commission to state new goals for the Amateur Radio Service, and in so doing to provide legal and substantial justification for the frequencies amateurs now occupy. It should also be well noted that further impetus has been afforded the Leyshon petition by the Commission itself, which at the same or about the same time of the Leyshon petition filing issued a Proposal for Rulemaking regarding further sharing of the 900-MHz amateur band. In short, the case in support of the Leyshon petition is essentially without weakness.

This petitioner does not advocate total deregulation of the Amateur

Radio Service as an option, as has petitioner Leyshon. However, as noted in the aforementioned *Comment* of 18 November 1992, a clear and formal declaration of the Commission's position regarding the future path of the Amateur Radio Service would be reasonable and appropriate. To summarize, information provided in the petition dated 12 April 1993 by Leyshon provides strong, and often overwhelming, evidence of a weakening of the Amateur Radio Service brought about by Commission involvement to bring eased licensing requirements to that Service. The Commission requested supporting evidence from petitioner Leyshon for his original petition of 2 June 1992; the petitioner, unexpectedly, provided it. It would thus appear proper for the Commission to declare forthright its agenda and goals for the Amateur Radio Service as a technical Service or a non-technical Service; and then to tailor its decisions to meet those goals. In this way, radio amateurs may more clearly understand the decisions of the Commission, and there will be minimal disturbance to the Service brought about by those decisions, whose scope to this time remains unclear.

Decision-making on this issue is solely within the purview of the Commission. Recent FCC decisions, however, which effectively have altered the nature of the Amateur Radio Service as a technical pursuit, have in fact compromised the ability of amateurs to justify their frequency allocations. The evidence thus indicates that the Commission is extremely unlikely to order a return to more stringent examination standards. However, this petitioner would caution that, any Commission decision to reject the Leyshon petition of 12 April 1993 without addressing on a point-by-point basis the issues advanced in that petition, despite the weight of evidence presented, must be viewed as clear indication that the Commission will proceed with further easing of requirements for amateur radio licensing, and the Amateur Radio Service's conversion to a personal radio service. Under such conditions, and in the absence of a redefined Part 97.1, the Service's ability to retain its frequency allocations would be further eroded.

Very truly yours,



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11 May 1993