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REQUEST FOR WAIVER – EXPEDITED ACTION REQUESTED

Roger Sherman, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Mr. Sherman:

By its counsel and pursuant to Section 1.925 of the Commission’s Rules, 47 C.F.R. § 1.925, Expert Linears America, LLC (“Expert”), submits this Request for Waiver of Section 97.317(a)(2) of the Commission’s Rules, 47 C.F.R. § 97.317(a)(2). Specifically, Expert seeks waiver of the 15 dB amplification limit imposed by Section 97.317(a)(2) as it applies to its Model 1.3K FA amplifier and other of its amplifiers when certified by the Commission. Expert is a privately held company headquartered and operating in Magnolia, Texas. It is the United States sales representative and maintenance and repair services provider for SPE Expert Linear Amplifiers manufactured in Rome, Italy. Expert’s market is mainly domestic but it also serves other markets in North and South America.

On April 7, 2016, Expert submitted a Petition for Rulemaking by which it seeks to entirely eliminate the unnecessary 15 dB amateur radio amplifier gain requirement set forth in Section 97.317(a)(2). That petition appeared on public notice on April 27, 2016 under RM-11767 and elicited some 72 comments. *See* Public Report 3041, April 27, 2016. The overwhelming collective response of the commenters is in support of the rulemaking proposal.¹ Indeed, ARRL,

¹ Those few who are opposed largely represent operators who prefer to use very low power for all communications and thus disfavor the use of amplifiers generally. While the hobby embraces differing preferences in station construction and operation, it is well established that the current legal limit of 1500 watts is necessary and appropriate in fulfilling the public interest goals of the Amateur Radio Service. Those comments seeking to disavow amplifiers, therefore, are not useful in this proceeding.

the national association for Amateur Radio, offers a detailed history underlying the original purpose of Section 97.317(a)(2) and why it is now an impediment to the public interest. In view of this broad support for the proposed rule change, it is reasonable to ask for a waiver of the current rule pending resolution of and subject to the outcome of the rulemaking proceeding.

Background. It is pertinent to include here a summary of the history underlying this waiver request. A more detailed historical and legal background was presented in Expert's Petition for Rulemaking and in many comments that were filed in response to it.

Section 97.317 outlines the standards for certification of external RF power amplifiers used in the Amateur Radio Service. Among them is the requirement of subsection (a)(2) that such amplifiers "not be capable of amplifying the input RF power (driving signal) by more than 15 dB gain." The Commission promulgated Section 97.317 at a time when the Citizens Band (CB) Radio Service was the primary service that individuals used to satisfy their personal communication needs. More specifically, the Commission adopted this rule in 1978 to prevent commercial manufacturers from marketing to CB Radio Service users RF power amplifiers that had been approved for use at amateur stations. But in its Notice of Proposed Rulemaking in WT Docket No. 04-140 (2004), the Commission noted that Section 95.411 of its Rules already satisfies the policy objectives sought by Sections 97.317 with regard to CB operations. Specifically, Section 95.411 prohibits, under any circumstances, an individual from attaching an external RF power amplifier or any device capable of amplifying the signal to a CB transmitter operating in the 26-28 MHz band. Thus, the Commission concluded, an individual who uses an amplifier at a CB Radio Service station would violate a CB Radio Service rule and not an amateur service rule. In order to eliminate redundancy and provide clarity in its rules, the Commission proposed to amend Section 97.317 and to eliminate the disparate restrictions imposed on manufacturers as compared to the restrictions imposed on amateur service licensees. It also proposed to allow manufacturers to market equipment in the United States that they may market overseas, and to delete the requirement (then in the rules) that a manufacturer must design an amplifier to use a minimum of 50 watts drive power.²

In its 2006 Report and Order in that Docket, the Commission completed its proposed rule revisions. It recognized that methods of preventing RF equipment from transmitting on frequencies other than those intended had been developed and it amended Sections 97.315 and 97.317 to permit the marketing of linear amplifiers for use at amateur radio stations that are not readily capable of operating in the 26-28 MHz band.³ But it did not further discuss the 15 dB amplification limitation, presumably because at that time the typical amateur transmitter emitted at least 50 watts, the power level referred in the NPRM, so that more than 15 dB of amplification would not be needed to attain the maximum permitted power for an Amateur Radio Service licensee (1500 watts). CB radios, on the other hand, typically transmit at only a few watts so that

² See *Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Services, Notice of Proposed Rulemaking and Order*, WT Docket No. 04-140, 19 FCC Rcd 7293, ¶¶ 83-85 (2004).

³ See *Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Services, Report and Order*, WT Docket No. 04-140, 21 FCC Rcd 11643, ¶¶ 42-43 (2004).

the 15 dB limit for them makes sense. Put simply, there is no need for the 15 dB limit to remain in Part 97, which governs the Amateur Radio Service.

Waiver standard.⁴ Under Section 1.925(b)(3), the Commission may grant a request for waiver if it is shown that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

The principal Expert amplifier at issue for purposes of this waiver request is its Model 1.3K FA. It carries FCC identifier 2ADK5GC324809 and the grantee is S.P.E. s.r.l. This model has become especially popular in the Amateur Radio market worldwide, with Expert serving as distributor in the United States. It has been imported with a modification that brings it into compliance with Section 97.317(a)(2), *i.e.*, it is capable of only 15 dB of amplification. In all respects, both currently and with grant of the requested waiver, it will comply with all in-band and out-of-band technical standards and restrictions as set forth in the Commission's equipment authorization rules. As currently modified, however, it is handicapped in its appeal to a large portion of the amateur radio amplifier market.

This Model 1.3K FA amplifier is inherently capable of considerably more than 15 dB of amplification, which makes it a perfect match for the Elecraft KX3 or other low-power transmitters that are now commonly manufactured in the United States and sold internationally. Such transmitters put out 10 watts or less, but with the U.S.-market modified Model 1.3K FA Expert amplifier a station using a KX3 or similar transmitter would be incapable of approaching anywhere near the maximum legal limit of 1500 watts output, necessary in many circumstances for meaningful communication given current propagation on the HF bands.⁵

Further, the Model 1.3K FA has proprietary software that makes it incapable of transmitting between 26 and 28 MHz, thus satisfying the Commission's requirement regarding CB radios. That software will remain in place following waiver of Section 97.317.

The Model 1.3K FA amplifier is sold internationally out of Italy but is not imported into the United States except as modified for compliance with the 15 dB gain limitation. Expert is not permitted to remove that modification, and Expert cannot sell the Model 1.3K FA in an unmodified form in the United States. Expert's principal market is domestic, but some modified amplifiers are sold to users elsewhere in North and South America, largely because of the greater

⁴ See also, *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972) ("Hard look" at the waiver request required by the Commission).

⁵ As is the case with most modern amateur amplifiers, the licensee is responsible for limiting output power to the legal limit, by reducing drive power or inserting attenuation at the input of the amplifier. See Section 97.313 of the rules. The Model 1.3K FA amplifier is capable of no greater than 1300-1500 watts PEP output no matter what the input power.

ease and lower costs of securing warranty and later maintenance services from Expert in Texas.⁶ Were the amplifier available in an unmodified form from Expert in Texas, international sales in the Western Hemisphere would be considerably enhanced, allowing Expert to compete meaningfully internationally. Other amplifiers capable of far more than 15 dB amplification are available outside the United States but Expert's unique capabilities and the quality of the underlying brand make Expert a preferred source, but far less so now because its principal product, the Model 1.3K FA, is limited by the 15 dB gain restriction. In short, Expert is at a disadvantage in the Americas in marketing the Model 1.3K FA amplifier because of the 15 dB restriction in Section 97.317.

Waiver justification. The public interest will be served by grant of this Request for Waiver because of the high likelihood for grant of the relief sought by the underlying rulemaking petition and because of the benefits to both the Amateur Radio Service generally and to Expert during the pendency of the rulemaking proceeding. Further, Expert is amenable to accepting grant of a waiver of Section 97.317(a)(2) subject to the outcome of the attendant rulemaking proceeding, RM-11767.

Returning to Section 1.925, the underlying purpose of Section 97.317(a)(2) in this case, to limit CB operations at illegal power, would not be frustrated or affected by grant of this waiver request during the pendency of the rulemaking proceeding in RM-11767 -- yet it would benefit Expert and serve the public interest. The domestic market for amateur radio users is not now being served because the Expert amplifiers, currently restricted to 15 dB of amplification, do not provide the maximum power permitted under Part 97 for the Amateur Radio Service when used with a portable transmitter such as the Elecraft KX3. Other transmitters are also available that produce only a few watts, *e.g.*, the Elecraft KX1, that could be used with the Model 1.3K FA to produce substantially more power than the Model 1.3K FA can now offer under the 15 dB limitation. In addition, the increasing prevalence of SDR (software-defined radio) choices that feature low output power and that similarly call for immediate grant of the requested waiver. In short, there should be no gain limitation at all on Expert's amplifiers otherwise certified under Commission rules.⁷ By making Expert's unmodified amplifiers available in the United States, FCC-licensed amateur radio operators will be able to operate state-of-the-art equipment at power levels capable of maximizing communications reliability in times of emergency, a clear public interest benefit.

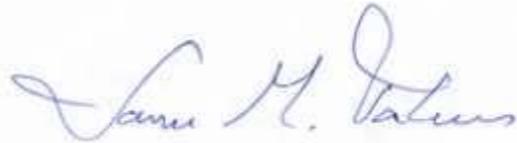
⁶ Expert's agreement with its manufacturer allows it to sell amplifiers only "in the Americas." While Expert could drop-ship amplifiers from Italy to a destination outside the United States, it is not economically practical and there would be no warranty from Expert. Amplifiers Expert sells, therefore, must come through its Texas facility and must be the modified version compliant with Section 97.317.

⁷ *Ibid.* Any new or revised version of the Model 1.3K FA or other Expert amplifier that supports higher gain would be subject to any necessary equipment authorization modification under OET rules.

Conclusion. This request for waiver of Section 97.317(a)(2) to permit certification of the Expert Model 1.3K FA amplifier and Expert's other amplifiers without any limitation as to amplification capability should be granted because it furthers the underlying purposes of Part 97 and it will serve the public interest. Application of the 15 dB limit to the Model 1.3K FA amplifier and other Expert amplifiers both frustrates international competition by an American company and limits the ability of Expert's amplifiers to provide emergency services in the Amateur Radio Service. Expert is amenable to a waiver subject to the outcome of the underlying rulemaking proceeding. Expeditious action on this request for waiver is requested.

If there any questions or you desire further information, please contact the undersigned at 703.241.1144 or jtalens@verizon.net.

Respectfully submitted,

A handwritten signature in blue ink that reads "James M. Talens". The signature is fluid and cursive, with the first name "James" being the most prominent.

James M. Talens
Counsel for Expert Linears America, LLC

cc: Roger Noel, Chief, Mobility Division, WTB
Julius Knapp, Chief Engineer, OET
Ira Keltz, Deputy Chief, Policy and Rules
Division, OET

Certification statement attached