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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	**WT Docket No. 98-143**
Amendment of Part 97 of the	)	
Commission's Amateur Service Rules	)	

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To: The Commission

PETITION OF ARRL, THE NATIONAL ASSOCIATION FOR AMATEUR RADIO
FOR PARTIAL RECONSIDERATION

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SUMMARY

ARRL, The National Association For Amateur Radio (ARRL), requests that the Commission reconsider and modify in two principal respects its *Report and Order*, FCC 99-412, 65 Fed. Reg. 6548 *et seq.*, released in the captioned proceeding December 30, 1999. ARRL requests that the Commission (1) continue to maintain records which indicate whether a Technician Class licensee has passed a telegraphy examination which entitles that licensee to operate on certain high-frequency (HF) amateur bands; and (2) modify Section 97.505(a) of the Commission's Rules to specify that any amateur, having passed an FCC-recognized telegraphy examination prior to the effective date of the rule changes adopted in this proceeding, is entitled to receive credit for the telegraphy element when applying for future upgrades.

The Commission has made some reasonable first steps in the streamlining of the Amateur Service. Due to its desire not to eliminate the license classes held by large numbers of amateurs, however, but rather only to grandfather those licensees into the license classes they now hold, the two transitional issues addressed herein should be addressed immediately, and in any case prior to the April 15, 2000 effective date of the Report and Order and the new rules implemented thereby. The Commission must, in order to preserve the ability of the Amateur Service to continue to preserve and protect its tradition and obligation to self-regulate, (and as well to protect the integrity of the incentive licensing structure) retain the database distinction between those Technician Class licensees which have completed the telegraphy examination and which have not. Furthermore, it must treat individuals identically in terms of element credit in the examination context for those who have at one time completed a 5 wpm telegraphy examination as an inherent element of a previously held amateur license, whether or not that license is expired or unexpired.

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To: The Commission

PETITION OF ARRL, THE NATIONAL ASSOCIATION FOR AMATEUR RADIO FOR PARTIAL RECONSIDERATION

ARRL, The National Association For Amateur Radio (ARRL), by counsel and pursuant to Section 1.429 of the Commission's Rules [47 C.F.R. §1.429], hereby respectfully requests that the Commission reconsider and modify in two principal respects its *Report and Order*, FCC 99-412, 65 Fed. Reg. 6548 *et seq.*, released in the captioned proceeding December 30, 1999.[1] Specifically, ARRL requests that the Commission (1) continue to maintain records which indicate whether a Technician Class licensee has passed a telegraphy examination which entitles that licensee to operate on certain high-frequency (HF) amateur bands; and (2) modify Section 97.505(a) of the Commission's Rules to specify that any amateur, having passed an FCC-recognized telegraphy examination prior to the effective date of the rule changes adopted in this proceeding, is entitled to receive credit for the telegraphy element when applying for future upgrades (as the Commission stated in the Report and Order that it would do). As good cause

[1] The Report and Order was published in the Federal Register on February 10, 2000, and thus this petition is timely, pursuant to Section 1.429(d) of the Commission's Rules.

for its Petition, ARRL states as follows:

I. Introduction

1. ARRL is satisfied that the Commission has, in the Report and Order, taken progressive steps toward streamlining the license structure in the Amateur Service. Though that effort is not yet complete, and it will not be until such time as the "refarming" of the Novice class HF subbands is effectuated (as ARRL had proposed in its comments in this proceeding), the Report and Order represents a good step forward in the process. It also provides, for the first time, a substantial incentive for existing Technician licensees to upgrade their license class, and to proceed with technical self-training in the process.

2. Because the Report and Order grandfathered existing Novice, Technician Plus, and Advanced Class licensees, however, effectively preserving those license classes for the indefinite future, rather than effectuating a one-time upgrade of those licensees and eliminating the license classes entirely, there remain transitional issues that are of substantial practical and/or equitable concern. These are subject to being reduced in magnitude in the years hence by attrition of licensees in the phased-out license classes by upgrade, but for the foreseeable future, all license classes remain, because the licensees remain. Therefore, at least two of the transitional problems created thereby must be addressed now.

II. The Commission Must, For Self-Regulatory Purposes, Maintain in its Database the Distinction Between Technician and Technician-Plus Licensees

3. The Report and Order states, at paragraph 11, that the Commission had, in the Notice of Proposed Rule Making in this proceeding[2], proposed:

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[2] *Notice of Proposed Rule Making*, 13 FCC Rcd. 15798 (1988) ("the Notice").

> to phase out the Technician Plus Class by renewing Technician Plus Class operator licenses as Technician Class operator licenses. We noted that when a Technician Class licensee modifies his or her license to change the operator class from Technician Class to Technician Plus Class, the VEs must prepare and administer a 5 wpm telegraphy examination, and the Commission is burdened with processing the resulting applications and revising the database (footnote omitted). The result of this license modification is that the Commission incurs the administrative costs of keeping a separate classification of Technician Class operator licenses who have passed a 5 wpm telegraphy examination.

The foregoing is essentially true, though the "administrative burden" identified by the Report and Order, which consists solely of maintaining the separate database, can hardly be characterized as a burden at all[3]. The VECs process all applications and forward data stream submissions to the Commission with pre-processed license data in virtually all cases. The Commission's "burden" in maintaining the database, therefore, consists only of the maintenance of a separate data field in the database, a field which is already in existence and operational, whereby Technician Class licensees who have passed the telegraphy examination are encoded with a "P", and those who have not, with a "T" in the field. It is by this means, and *only* by this means, that a radio amateur monitoring the Amateur bands can determine whether or not a Technician class licensee is entitled, both by International Radio Regulations and by Commission regulations, to certain operating privileges.

4. The Report and Order, at paragraph 20, states in part as follows:

> With regard to our proposal to renew Technician Plus Class operator licenses as Technician Class operator licenses, we note that Technician Plus Class licensees personally hold documentation (footnote omitted) that they have passed a 5 wpm telegraphy examination. For this reason, we see no need to maintain a separate

[3] In fact, because the Commission maintains the distinction now between Technician and Technician Plus licensees, any change in the database format carries with it the administrative cost of the software engineering in the process. In effect, therefore, there is an administrative cost in eliminating the "T" and "P" distinction, but not in maintaining the *status quo*.

> classification of these licensees. Rather, if documentation is needed to verify whether a licensee has passed a telegraphy examination, we may request the documentation from that licensee or the VECs (citation omitted). We will, therefore, adopt our proposal to renew Technician Plus Class licensees as Technician Class licensees.

Footnotes to this portion of the Report and Order refer to the documentation which a Technician Class licensee might have (a Technician Class license issued before February 14, 1991, when all Technician Class licensees would have had to have passed the telegraphy examination; a Certificate of Successful Completion of Examination showing telegraphy credit; or a Technician Plus class of license) which could establish whether or not that Technician Class licensee had in fact completed a telegraphy examination. The Commission also claims that if there is a dispute, it could require the Technician licensee to produce that documentation, or that the Commission could compel the VEC that processed the application to provide such.[4]

5. This misses the point in two respects. First of all, the Commission has long expected the Amateur Service to be, and it has been and is, self-regulating. Amateurs monitor each other's transmissions, and the ability to identify an amateur and to easily and rapidly determine that amateur's license class is an extremely important component of the ability of the Amateur Service to police itself. What will inevitably result if the Commission does not maintain any

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[4] The Commission cites 47 U.S.C. § 308(b), and 47 C.F.R. §§97.5(a) and 97.519(c). These provisions, respectively, permit the Commission to request written statements of fact to determine whether a license should have been issued or should be revoked; require the licensee to hold a station license (or reciprocal license or Canadian license) in order to transmit in jurisdictions regulated by the FCC; and require VECs to make examination records available to FCC upon request. None of these provisions, individually or in the aggregate, requires the retention of superseded licenses or expired CSCE documents after issuance of a new license, or the retention of documents other than a current license, for any particular time. In the case of VECs, test documents need be kept no longer than 15 months after a license application is forwarded to FCC. See Section 97.519(b)(3). There is no other record retention requirement set forth in the rules.

distinction between the two types of Technician licensee in the database, is that amateurs other than the licensee, who have neither the need nor ability to request license documents from the licensee, will be unable to determine whether a licensee heard operating on, for example, the amateur 10-meter band has any entitlement to do so. The Commission has neither the time nor the resources to assume the entirety of the enforcement burden at this level, nor should it have to do so. It must, however, not deprive the Amateur community of the fundamental tool necessary to conduct its own self-regulatory effort.

6. Second, the suggestion that the Commission, if enforcement efforts so require, could request documents from the licensee is premised on a mistake of fact. Once the Commission's database no longer distinguishes between those Technician class licensees who have completed a telegraphy examination and those who have not, the ability to make that distinction gradually disappears. There is no recordkeeping requirement on the part of VECs that extends by rule earlier than 15 months after an application is submitted by a VEC to the Commission[5]; and no requirement that a licensee maintain superseded license documents, or expired certificates of successful completion of examinations.

7. ARRL is the sponsor of the Amateur Auxiliary program, which is a volunteer program that provides on-air compliance monitoring in amateur bands. It operates pursuant to a cooperative agreement with the Commission's Enforcement Bureau. Both ARRL and the

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[5] It is acknowledged that VECs were asked by the Commission informally, some years ago, to maintain summary test information, consisting of roster and FCC test statistical reports indefinitely. This is not a requirement, nor has the request been subjected to the Paperwork Reduction Act analysis. As the result, the obligation is not enforceable, and it is unclear whether any but the ARRL-VEC actually adhere to it. In any event, it would not be a sufficient means to identify individuals who are Technician Plus licensees, nor in any case a useful reference for amateurs, ARRL Amateur Auxiliary volunteers, or Commission enforcement personnel.

Enforcement Bureau have devoted extensive resources and effort over many years to encourage and develop this program, and that Bureau has recently noted a need to rely increasingly on that program and the traditional self-regulatory character of the Amateur Service in the future. The success of the on-air monitoring conducted by these volunteers is dependent in part on the information available to them in order to determine whether or not individual amateurs are operating in the bands available pursuant to their license class. The Official Observers who are part of the Amateur Auxiliary have neither the opportunity nor the ability to verify license documents in the possession of the Technician Licensee. Their task is to determine in real time, when a callsign belonging to a Technician class licensee is heard on an Amateur high-frequency band, whether that person is or is not entitled to operate there by virtue of the operator's license class. Consultation of the FCC database is the only means available to Amateur Auxiliary participants of making that determination. Without the distinction in the database, it is impossible to verify operator privileges at the time, and to address the matter appropriately.

8. The same determination must be possible for any amateur, whether or not a participant in the Amateur Auxiliary program. Many times, the Commission has credited the Amateur Service with being self-regulating, and the United States Congress has done the same. They have noted that the Amateur Service is vigilant in the protection of its shared allocations. To take away a principal tool needed by amateurs to continue this vigilance, and the self-regulatory tradition, supposedly to create a vaguely stated administrative convenience (which, as discussed, is not really a convenience of any substance at all) is counterproductive.

9. For the foregoing reasons, ARRL requests that the Commission continue to maintain database records of those Technicians who have successfully completed a telegraphy

examination, and those who have not.

III. The Commission Must Treat all Similarly-Situated Licensees Identically Relative to Credit for Telegraphy Examination Elements

10. In the Commission's rules, as configured prior to the Report and Order, there existed a specific listing of circumstances in which volunteer examiners (VEs) were required to afford credit to examination candidates for certain examination elements. At Section 97.505(a)(9) of the rules, the Commission affords an examinee credit for the Element 1(A), 5 wpm telegraphy examination if the examinee had **at any time** held a Technician class license issued prior to February 14, 1991 (when the Technician Class license without a telegraphy examination requirement was first established).[6] Thus, even though an examinee's previous Technician class license (first issued prior to February 14, 1991) may have expired, and may have been expired for many years prior to the examination (thus not subject to the grace period for reinstatement of expired licenses), the rules provided that such an examinee does not have to retake a 5 wpm telegraphy examination.

11. The problem under the old rules, which is continued in the modified Section 97.505 set forth in the December 31, 1999 version of the Report and Order[7], is that no other class of

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[6] Section 97.505(a)(9) states that:

> (a) The administering VEs must give credit as specified below to an examinee holding any of the following documents:
>
> *****
>
> (9) An expired or unexpired FCC-issued Technician Class license document granted before February 14, 1991: Element 1(A)

[7] There was a modification of Section 97.505(a)(5) in the Report and Order as printed in the Federal Register February 10, 2000, that did not appear in the Report and Order as initially released by the Commission December 31, 1999. The change in the Federal Register published version made it possible for an examinee who had at one time held a Novice class amateur

examinee who was a *former* Commission licensee, and who had once taken the 5 wpm telegraphy examination, is afforded credit for that same telegraphy element (even though they at one time passed the telegraphy examination) unless their Novice, General, Advanced or Extra Class license is either current or within the grace period for renewal. Furthermore, there appears no rationale for the different treatment afforded these similarly-situated licensees. Furthermore, the Report and Order stated that the Commission amended the rules to fix this problem, but it in fact did not. At paragraph 52 of the Report and Order, the Commission stated:

> We are amending the rules so that licensees who previously have passed a telegraphy examination will not have to pass another telegraphy examination to advance to the highest class of operator license.

12. As noted herein at Footnote 7, the Commission has addressed this problem (in the Federal Register version of the Report and Order) relative to those who once held Novice Class licenses, and who therefore at one time took and passed a 5 wpm telegraphy examination. Between the time the Commission released the Report and Order, and the time it was printed in the Federal Register, Section 97.505(a)(5) was amended to provide that Element 1 (the new designator for the 5 wpm telegraphy examination element) credit would be given to any examinee who held an expired or unexpired FCC-granted Novice Class license grant. This was a proper editorial change of this rule, because it ceases the distinction that never should have existed in the first place: Former Technician Class licensees should not be treated differently than any other former licensee in terms of telegraphy element credit.

13. However, the rules still discriminate between those who hold expired (and beyond

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license, whether or not that license had expired and was beyond the grace period for reinstatement, to receive credit for Element 1, the 5 wpm telegraphy requirement.

the grace period for reinstatement) Novice or Technician class licenses on the one hand, and those who hold expired (but beyond the grace period for reinstatement) General, Advanced or Extra Class licenses on the other. The practical effect of the distinction made in the rules in the Report and Order, even after the Federal Register version, is that they determine who must take a telegraphy examination *again* when the examinee either upgrades his or her license class, or reenters Amateur Radio after allowing a previous license to lapse and remain lapsed through the two-year grace period. If a General, Advanced or Amateur Extra Class licensee, for example, allows his or her license class to lapse, and then a few years later attempts to reenter Amateur Radio, with its new streamlined license classes, after the effective date of the Report and Order, that person, even though he or she at one time had taken and passed the 5 wpm and 13 wpm telegraphy examinations, will have to take and pass the 5 wpm telegraphy examination again in order to obtain a General Class license. However, if that same person at one time held instead a Novice or a Technician Class license (in the case of the Technician, a license issued prior to February 14, 1991) then that licensee would *not* have to take a telegraphy examination again. This constitutes a distinction without a difference, and the Commission cannot, in equity or as a matter of equal protection under the Laws, treat similarly situated people differently in this context.

14. Therefore, the Commission must conform the rules regarding element credit, so that Element 1 is afforded to those who hold an **expired or** unexpired, FCC-issued, Novice, Technician (first issued prior to February 14, 1991), General, Advanced or Amateur Extra Class license. In other words, the Commission should standardize the element credit rules to provide that any amateur who provides proof of having at one time passed an FCC-recognized 5 wpm

telegraphy examination (as an inherent element of a previously held amateur license, expired or unexpired) should receive credit for the Element 1 telegraphy examination.

IV. Conclusions

14. The Commission has made some reasonable first steps in the streamlining of the Amateur Service. Due to its desire not to eliminate the license classes held by large numbers of amateurs, however, but rather only to grandfather those licensees into the license classes they now hold, the two transitional issues here should be addressed immediately, and in any case prior to the April 15, 2000 effective date of the Report and Order and the new rules implemented thereby.[8] The Commission must, in order to preserve the ability of the Amateur Service to continue to preserve and protect its tradition and obligation to self-regulate, (and as well to protect the integrity of the incentive licensing structure) retain the database distinction between those Technician Class licensees which have completed the telegraphy examination and which have not. Furthermore, it must treat individuals identically in terms of element credit in the examination context for those who have at one time completed a 5 wpm telegraphy

[8] It is noted that many of the rule changes adopted in the Report and Order in this proceeding were editorial in nature. The Commission may wish to utilize this opportunity, therefore, to correct one additional editorial matter, admittedly one not addressed in this proceeding at all. Section 97.9(b) of the Commission's Rules requires that, in order for a successful examination candidate to utilize "instant upgrade" privileges of his or her new license class pending action on an application for upgraded license privileges, that candidate must have submitted "a FCC Form 605 document". However, it is not necessary for any VE or VEC to actually use FCC Form 605 documents, per the terms of Section 97.17(b)(1), which currently specifies that VEs can collect necessary license information from a candidate in any manner of their choosing, including creating their own forms. It makes no sense to require the submission of an FCC version of Form 605 for purposes of interim operating authority, while that form is not required for any other licensing purpose. The Section 97.9(b) is a remnant of past rules when an actual FCC Form 610 was required for all purposes. The requirement of submission of an FCC Form 605 should be replaced by a more generic requirement. This proceeding is an opportunity to accomplish this change.

examination as an inherent element of a previously held amateur license, whether or not that license is expired or unexpired.

Therefore, the foregoing considered, good cause having been shown, ARRL, The National Association For Amateur Radio, respectfully requests that the Commission reconsider in part, and revise, the rules adopted in this proceeding in the two respects noted herein, and in other respects as the Commission may determine reasonable and proper.

Respectfully submitted,

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