

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 97 of the Commission's Rules) WT Docket No. 05-235
To Implement WRC-03 Regulations Applicable to)
Requirements for Operator Licenses in the) October 31, 2005
Amateur Radio Service)

**COMMENTS OF BRENNAN T. PRICE IN SUPPORT OF THE NOTICE OF
PROPOSED RULEMAKING AND PETITION FOR ISSUANCE OF FURTHER
NOTICE OF PROPOSED RULEMAKING**

Brennan T. Price hereby timely submits these comments in the above captioned proceeding and petitions for the continuation of this proceeding for further rulemaking. Price supports the adoption of the rules proposed in the Notice of Proposed Rulemaking and Order released July 19, 2005,¹ but their adoption without further modification will, for the first time in history, preclude any new amateur radio operator from obtaining operating privileges below 30 MHz without passing written tests for two license classes. Because this outcome would be deleterious to the amateur radio service and contrary to the spirit of the regulations adopted at WRC-03, Price petitions for further rulemaking to remedy this result.

¹ Amendment of Part 97 of the Commission's Rules to Implement WRC-03 Regulations Applicable to Requirements for Operator Licenses in the Amateur Radio Service, *Notice of Proposed Rulemaking and Order*, 20 F.C.C.R. 13,247 (2005) [hereinafter *NPRM*].

I. COMMENTER/PETITIONER'S BACKGROUND

Brennan T. Price is the grantee of an Amateur Extra operator/primary station license and has been issued the call sign N4QX. He has been an amateur radio licensee since 1997, and obtained Amateur Extra class in February 1999, prior to the last major restructuring of the amateur service licensing rules.² He has been active as a volunteer examiner, administering examinations under both pre-restructuring and post-restructuring rules. From April 2000 through March 2004, he was an employee of the American Radio Relay League, the National Association for Amateur Radio (ARRL), serving in a variety of project management and editorial capacities. Since graduating from law school in January 2005, he has been an associate at Axinn, Veltrop & Harkrider LLP in Hartford, Connecticut, working primarily in the firm's intellectual property practice group. He is licensed to practice law in the State of Connecticut, and continues to serve ARRL as a Volunteer Counsel.³

Price utilizes a variety of operating modes and frequencies when utilizing his amateur radio license. He particularly enjoys Morse telegraphy on all bands and the challenges of all modes of operation on bands above 50 MHz, although not to the exclusion of voice and data communications on other bands. While at ARRL, his editorial work frequently allowed him to contribute to publications focused on these types of amateur operation. He narrated the latest edition of *Your Introduction to Morse Code*,

² 1998 Biennial Regulatory Review—Amendment of Part 97 of the Commission's Amateur Service Rules, *Report and Order*, WT Docket 98-143, 15 F.C.C.R. 315 (1999) [hereinafter *Restructuring Order*].

³ ARRL Volunteer Counsel agree to provide an initial consultation to ARRL members facing a legal issue relating to amateur radio, usually (but not always) a land use matter relating to the erection of an antenna for use at an amateur radio station. By way of clarification and to avoid any misunderstanding, Price is NOT representing ARRL in this matter. The comments and petition in this filing are those of Price in his individual capacity.

an audio recording designed to assist those seeking to pass the current Element 1 examination and those otherwise seeking initial proficiency in Morse Telegraphy. He also served as the editor of four editions of *The ARRL Repeater Directory*, a reference work for operators at 28 MHz and above primarily focused on FM and repeaters.

II. COMMENTS ON THE NOTICE OF PROPOSED RULEMAKING

A. The Telegraphy Requirement Should Be Discarded.

The Commission is to be commended for addressing whether Element 1 should be retained. As the volume of comments filed in this proceeding indicates, this issue is among the more contentious among licensees of the amateur radio service. Through the clamor, the Commission has rightfully focused on whether the telegraphy element continues to serve a regulatory purpose. In the 2000 Restructuring proceeding, the Commission reiterated its finding in the 1990 *Codeless Technician* decision⁴ “that passing a telegraphy examination, for regulatory purposes, is no more and no less than proof of the examinee's ability to send and receive text in Morse code at some specified rate.”⁵ Prior to WRC-03, this proof was required by *Radio Regulation* S25.5.⁶ Now that this proof is no longer an international requirement, the regulatory purpose of the telegraphy requirement no longer exists.

Arguments in favor of maintaining the telegraphy requirement, while undoubtedly sincere and zealously presented, fail to focus on whether Element 1 continues to serve

⁴ Amendment of Part 97 of the Commission's Rules Concerning the Establishment of a Codeless Class of Amateur Operator License, Report and Order, PR Docket No. 90-55, 5 F.C.C.R. 7,631 (1990) [hereinafter *Codeless Technician Order*].

⁵ *Restructuring Order* at ¶ 30.

⁶ See *NPRM* at ¶5 & n.15 (quoting the text of the old regulation).

any regulatory purpose. Nostalgia, operating preferences, and tradition simply cannot substitute for a legitimate regulatory purpose, and the Commission is correct to deemphasize the only operating mode in which a non-written practicum is required. Those who feel strongly about preserving the use of Morse telegraphy as a traditional and enjoyable mode of communication—and this commenter is among them—have ample resources to do so. With the exception of the five channels near 5 MHz authorized by § 97.303(s) of the Commission’s Rules, Morse telegraphy is an allowed mode of transmission on any amateur frequency.⁷ The enthusiasm of telegraphy users, coupled with the (nearly) full complement of amateur spectrum available for telegraphy, will ensure that the mode will continue to enjoy use and should attract new operators even in the absence of a testing requirement. As the Commission noted in the 1990 *Codeless Technician* decision, “[We do] not propose to discontinue the authorization of telegraphy CW emission types on any amateur service frequency. The amateur service in the future, as it has in the past, can provide to those who personally desire to do so the opportunity to communicate by telegraphy.”⁸

Now that the regulatory purpose for which the telegraphy requirement was implemented has disappeared, the Commission should adopt its proposed rules eliminating the requirement.

B. The Proposed Result Of An Entry Level License With No Possibility Of HF Privileges Is Unprecedented And Unwise.

While the Commission’s laser-like focus on the regulatory purpose of the telegraphy requirement is commendable, its reluctance to consider whether Technician

⁷ 47 C.F.R. § 97.305(a).

⁸ *Codeless Technician Order* at ¶15.

licensees should be afforded HF operating privileges is frankly disappointing. Perhaps the Commission's reluctance can be attributed to the large scope of some of the proposals presented and commenter reaction to a perceived "giveaway" of operating privileges. Nevertheless, as the amateur service moves into the world after WRC-03, it is ripe to consider whether the current entry route to the amateur radio service is a relic of the pre-WRC-03 past.

Barring the case in which a candidate passes multiple examinations in one sitting, new licensees in the amateur radio service must enter as Technician Class licensees. The current privileges of a Technician Class licensee are exclusively for frequencies above 30 MHz, as was required by deleted *Radio Regulation S.25.5*.⁹ While it is currently possible for a Technician Class licensee to gain limited HF privileges by passing a telegraphy examination,¹⁰ this option would presumably be removed if the Commission adopts its proposed elimination of the telegraphy requirement. For the first time ever, a candidate seeking HF privileges would have to pass *two* written examinations in order to attain them,¹¹ a situation that would certainly be discouraging to youth seeking to enter the amateur radio service.

Prior to the adoption of the *Codeless Technician* rules, the only entry path into the amateur radio service was through a Novice Class license, which entitled (and entitles) the operator to the same HF privileges granted to Technician Class licensees who had (and have) passed a telegraphy examination.¹² While the HF privileges accorded to

⁹ 47 C.F.R. § 97.301(a).

¹⁰ *Id.* § 97.301(e).

¹¹ Presently, a new Technician need only pass written Element 2 and a telegraphy examination. Prior to 2000, an entering Novice needed only to pass the former Element 2 and a telegraphy examination. In neither case was a second examination required.

¹² *Codeless Technician Order* at ¶15 & n.5; 47 C.F.R. § 97.301(e).

Novice licensees were limited, they did provide a new licensee with the capabilities for long distance and worldwide communications unique to the HF spectrum. The president of ARRL recently told *Amateur Radio Newslines* that “Back when I was first a Novice, I got a good taste of what was going on HF and how we could do long-distance communications. Today, we don't have that.”¹³

The reason “we don't have that” is because the Technician Class became the sole route of entry to the amateur radio service in 2000.¹⁴ Even though the Novice Class entry route allowed for HF privileges, the codeless Technician Class route was clearly the entry path of choice.¹⁵ However, the pre-WRC-03 international telegraphy requirement dictated that any codeless licensee could only use frequencies above 30 MHz. This limited—and still limits—entering Technicians to operation on spectrum that, while certainly valuable, does not have the worldwide propagation characteristics of HF. While VHF enthusiasts—including the petitioner—value the challenges and advantages of the amateur spectrum above 30 MHz, such spectrum has an attraction perhaps less palpable than HF operation. The Commission should follow up the elimination of the telegraphy requirement by eliminating the antiquated restriction on Technician Class licensees' frequency privileges, a restriction that has likely contributed to a decline in the number of licensees as some 1990s-era codeless Technicians have declined to renew.

It should be noted that the only requirement a Technician Class licensee must fulfill before earning the privileges in Section 97.301(e) of the Commission's Rules is the

¹³ Remarks of Jim Haynie, quoted in *Amateur Radio Newslines* No. 1472, Oct. 28, 2005 (submitted as supporting material in a concurrent filing via the Electronic Comment Filing System).

¹⁴ *Restructuring Order* at ¶ 19.

¹⁵ *Id.*

very requirement the Commission now proposes to eliminate.¹⁶ Further, the current Technician Class question pool promulgated by the Question Pool Committee of the National Conference of Volunteer Examiner Coordinators includes questions germane to the operating privileges of a Technician with HF privileges, and all new Technician candidates, whether attempting the telegraphy element or not, must know this material in order to be fully prepared for the examination.¹⁷ Therefore, a Technician Class licensee has demonstrated, through the Element 2 written examination, the capability to operate an amateur station utilizing the limited privileges granted to Technicians who have passed a telegraphy examination. In the absence of the telegraphy requirement, there is absolutely no reason to deny all Technicians the privileges authorized by Section 97.301(e).

The Commission should also establish uniformity in Technician privileges in order to eliminate a de facto, untracked, and unenforceable fourth license class, comprising Technician Class operators who have HF privileges. Since the 2000 *Restructuring Order*, when the Commission adopted a three-class license structure, the

¹⁶ The Commission's assertion that "the differences between the Technician and Technician Plus examinations were far greater than simply the Morse code test", *NPRM* ¶ 31, frankly does not pass the straight-faced test. The 1991-2000 Technician Class license required a candidate to pass what were then Elements 2 and 3A. Successful Technician Plus candidates—including the petitioner when he was first licensed as KF4UZB in 1997—were required to pass Elements 1A (the 5WPM telegraphy test), 2 and 3A. Element 1A was the *only* difference, and had the petitioner not passed Element 1A when he earned his first license, he *still* would have earned a Technician Class license. The pre-2000 written Element 2, required for all classes of license from Novice on up, tested significant, if basic, HF material, and this material is still amply tested by today's Element 2. See *infra* note 17 and accompanying text.

¹⁷ See Technician Class Question Pool, Questions T1B10 (asking the candidate to identify a frequency as within the 10 meter band), T1D05 (asking about documentation sufficient to show authorization to operate on the Novice Class frequencies below 30 MHz), T2B01 (asking the candidate to identify authorized 80 meter frequencies for Technician Class licensees with HF privileges), T2B02 (same question with respect to 10 meter frequencies), T2B05 (allowed emission types for Technicians with HF operating privileges on the 40 meter band), T2B06 (same question with respect to allowed emission types on 10 meters), T2B11 (lower sideband usually used on 10 meters), T2B12 (allowed power for Technicians on 10 meters), all 25 questions of Subelement T3 (HF propagation and HF vs. VHF vs. UHF propagation characteristics), T4C12 (type of antenna suitable for portable HF amateur station), T6C02 (appropriate filter to cut down on harmonic radiation from HF amateur transmitter), T6C03 (type of filter appropriate for installation on television to prevent RF overload from an amateur HF station), T0D08 (maximum permissible RF exposure on HF bands for Technicians with HF privileges). The question pool is available at <http://www.arrl.org/arrlvec/tech2003.txt>.

Commission's ULS database has not distinguished between Technician Class licensees who have newly earned HF privileges by passing Element 1 and those who have not.¹⁸ Frankly, neither the Commission nor any amateur licensee can tell whether an transmission on HF by a recent Technician Class licensee is authorized or not. Although the licensee should keep documentation of having passed Element 1, it would be a burden on the Commission's enforcement staff to ask an amateur to provide such documentation, and it would be intrusive and inappropriate for a self-policing amateur, including those members of the Amateur Auxiliary to the FCC, to make such a request. By maintaining two different sets of operating privileges for Technician Class operators, the Commission has essentially retained a constructive fourth license class while eliminating its ability to enforce the regulations pertaining to it. The Commission correctly concludes that a three-class license structure serves the public interest,¹⁹ but it has not yet truly created a three-class license structure. Establishing uniform HF operating privileges for *all* Technician Class licensees will eliminate the existing de facto fourth license class and remove an antiquated and unenforceable distinction among Technician licensees.

A unification of Technician Class operating privileges may be simply effected by removing the clauses dealing with proficiency in telegraphy from the current text of Sections 97.301(e) and 97.313(c)(2). These changes are less ambitious than those denied in the *NPRM*²⁰ and will serve the public interest by allowing new amateurs to experience HF communications and eliminating an unnecessary and unenforceable regulation held over from the era of the international telegraphy requirement.

¹⁸ Although the Commission continues to designate former Technician Plus Class licensees in their database, this action does nothing to identify Technician Class licensees who have earned HF privileges by passing Element 1 on or after April 15, 2000.

¹⁹ *NPRM* ¶ 29.

²⁰ See *NPRM* ¶¶ 25-32.

III. PETITION FOR FURTHER RULEMAKING

For the reasons presented in Part II.B. above, Price hereby petitions for continuation of this proceeding to consider the rule changes proposed below:

1. Section 97.301 is amended by revising paragraph (e) to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(e) For a station having a control operator who has been granted an operator license of Novice Class or Technician Class:

* * * * *

2. Section 97.313 is amended by revising subparagraph (c)(2) to read as follows:

§ 97.313 Transmitter power standards.

* * * * *

(c) No station may transmit with a transmitter power exceeding 200 W PEP on:

* * * * *

(2) The 28.1-28.5 MHz segment when the control operator is a Novice Class operator or a Technician Class operator.

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CONCLUSION

The elimination of *Radio Regulation S25.5* provides the Commission with an opportunity to eliminate a requirement that no longer serves a regulatory purpose. The Commission is to be commended for taking this opportunity, but should not maintain a licensing structure that has its roots in the now-deleted *Radio Regulation S25.5*. Failing to grant all Technician Class licensees the privileges currently enjoyed by Technician Class licensees who have passed Element 1 only maintains a de facto, untracked, unenforceable fourth license class and forces the constraints of the pre-WRC-03 regulatory requirements on future generations of post-WRC-03 licensees. For these reasons, the Commission should adopt its currently proposed rules and initiate a *Further Notice of Proposed Rulemaking* to finish the job that WRC-03 started and eliminate an unfortunate, unwise, and no longer necessary distinction among Technician Class licensees in its current rules.



Brennan T. Price
Commenter/Petitioner
October 31, 2005