

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 ) RM-10781, RM-10782, RM-10783,
Amateur Radio Service ) RM-10784, RM-10785, RM-10786,
) RM-10787, RM-10805, RM-10806,
) RM-10807, RM-10808, RM-10809,
) RM-10810, RM-10811, RM-10867,
) RM-10868, RM-10869, RM-10870

NOTICE OF PROPOSED RULE MAKING AND ORDER

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By the Commission:

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## I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In this *Notice of Proposed Rule Making and Order (NPRM)*, we address eighteen petitions for rulemaking.<sup>1</sup> The petitioners request that we amend the Commission's amateur radio service rules<sup>2</sup> to implement revised international *Radio Regulations* that were adopted at the 2003 World Radiocommunication Conference (WRC-03).<sup>3</sup> Most of the petitioners request that we entirely or partially eliminate the requirement that an individual must pass an international Morse code<sup>4</sup> telegraphy examination<sup>5</sup> in order to qualify for certain classes of amateur radio operator licenses.<sup>6</sup> Others request that we either maintain the current requirement or increase the speed in telegraphy that an individual must demonstrate in order to qualify for certain classes of amateur radio operator licenses. In addition, some petitioners request that we establish a new class of operator license in the amateur service, or otherwise modify the license structure or associated operating privileges.

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<sup>1</sup> See RM-10781, Peter M. Beauregard, Petition for Rulemaking (filed July 15, 2003) (Beauregard Petition); RM-10782, P.V. Coppola *et. al.*, Petition for Rulemaking (filed July 18, 2003) (Coppola Petition); RM-10783, Kiernan K. Holliday, Petition for Rulemaking (filed July 21, 2003) (Holliday Petition); RM-10784, Dale E. Reich, Petition for Rulemaking (filed July 28, 2003) (Reich Petition); RM-10785, Eric R. Ward, Petition for Rulemaking (filed July 30, 2003) (Ward Petition); RM-10786, No Code International (NCI), Petition for Rulemaking (filed August 13, 2003) (NCI Petition); RM-10787, National Conference of Volunteer Examiner Coordinators (NCVEC), Petition for Rulemaking (filed August 1, 2003) (NCVEC Petition I); RM-10805, Charles L. Young, Jr., Petition for Rule Making (filed September 5, 2003) (Young Petition); RM-10806, Frank W. Napurano, Petition (filed August 14, 2003) (Napurano Petition); RM-10807, Robert G. Rightsell and Harry A.M. Kholer, Petition for Rulemaking (filed September 5, 2003) (Rightsell-Kholer Petition); RM-10808, Joseph Speroni, Petition for Rulemaking (filed September 8, 2003) (Speroni Petition); RM-10809, Puerto Rico Amateur Radio League, Petition for Rulemaking (filed September 11, 2003) (PRARL Petition); RM-10810, James Roux, Petition for Rule Making (filed September 11, 2003) (Roux Petition); RM-10811, FISTS CW Club, Petition for Rulemaking (filed September 2, 2003) (FISTS Petition); RM-10867, American Radio Relay League, Inc. (ARRL), Petition for Rulemaking (filed March 18, 2004) (ARRL Petition); RM-10868, Radio Amateur Foundation (RAF), Petition for Rule Making (filed February 20, 2004) (RAF Petition); RM-10869, Ronald D. Lowrance, Petition (filed September 8, 2003) (Lowrance Petition); and RM-10870, NCVEC, Petition for Rulemaking (filed March 4, 2004) (NCVEC Petition II).

<sup>2</sup> 47 C.F.R Part 97, hereafter referred to as amateur radio service rules or amateur service rules.

<sup>3</sup> See *World Radiocommunication Conference Final Acts (Geneva, 2003) (WRC-03 Final Acts)*, Article 25. The *WRC-03 Final Acts* applicable to the amateur service became effective on July 5, 2003. See *WRC-03 Final Acts*, Annex.

<sup>4</sup> See 47 C.F.R. §§ 97.3(a)(27), 97.503(a). The international Morse code is defined in ITU-T Recommendation F.1 (March, 1998), Division B, I. Morse code. It consists of alphanumeric characters represented by dots, dashes, or some combination thereof.

<sup>5</sup> The telegraphy examination requires an examinee to listen to an audio recording of a message that is typically exchanged between two amateur stations and demonstrate, either by transcribing the message text or answering a series of questions based on the content of message, that he or she has the ability to receive correctly Morse code texts at not less than five words per minute (wpm). The message is prepared in such a way that it uses all of the letters of the alphabet, the numerals 0-9, certain punctuation marks, and three prosigns (symbols formed by combining together two letters into one without the inter-letter space). See 47 C.F.R. §§ 97.503(a), 97.507(d). Whether the examinee passes the telegraphy examination is based on the examinee's transcription of the text or answers to the questions. For purposes of this *NPRM*, phrases such as "Morse code test," "telegraphy examination," and "telegraphy examination in the international Morse code" are used interchangeably.

<sup>6</sup> See para. 8, *infra*.

2. In response to the petitions, over 6,200 comments were filed. Because some of the petitions have presented sufficient evidence to warrant proposing changing our rules, and in the interest of administrative efficiency, we have consolidated our treatment of these petitions in this *NPRM*.

3. Based upon the petitions and comments, we propose to amend our amateur service rules to eliminate the requirement that individuals pass a telegraphy examination in order to qualify for any amateur radio operator license. We believe that this proposal, if adopted, would (1) encourage individuals who are interested in communications technology, or who are able to contribute to the advancement of the radio art, to become amateur radio operators; (2) eliminate a requirement that we believe is now unnecessary and that may discourage amateur service licensees from advancing their skills in the communications and technical phases of amateur radio; and (3) promote more efficient use of the radio spectrum currently allocated to the amateur radio service. We solicit comments on our tentative conclusions. We decline to propose any other changes to amateur radio service licensing or operating privileges in this proceeding.<sup>7</sup>

## II. BACKGROUND

4. The Commission's Rules define the amateur service as a radiocommunication service for the purpose of self-training, intercommunication, and technical investigations by amateur radio operators.<sup>8</sup> This definition reflects the principles that express the fundamental purpose of the amateur service in the United States.<sup>9</sup> An amateur radio operator is a person named in an amateur operator/primary license station grant on our Universal Licensing System consolidated licensee database,<sup>10</sup> who is interested in radio technique solely with a personal aim and without pecuniary interest,<sup>11</sup> and who may engage in voluntary, noncommercial communications with other amateur radio operators located in the United States and in foreign countries.<sup>12</sup> Millions of amateur radio operators throughout the world communicate directly with each other by exchanging voice, teleprinting, telegraphy, digital packet, facsimile, and television messages. Amateur radio operators on a voluntary basis also may provide communications to meet essential needs and facilitate relief actions when normal communications systems are overloaded, damaged, or disrupted.<sup>13</sup>

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<sup>7</sup> However, we note that, in a separate proceeding, the Commission already has sought comment on proposed rule changes regarding some of the other issues raised by petitioners in this proceeding. *See* Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Services, *Notice of Proposed Rulemaking*, WT Docket No. 04-140, 19 FCC Rcd 7293, 7300 ¶ 11 (2004) (*Phone Band Expansion NPRM*).

<sup>8</sup> *See* 47 C.F.R. §§ 2.1(c), 97.3(a)(4).

<sup>9</sup> The Commission's regulation of the amateur service is based on the following principles: recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communications service; continuation and extension of the amateur's proven ability to contribute to the advancement of the radio art; encouragement and improvement of the service through rules which provide for advancing skills in both the communication and technical phases of the radio art; expansion of the existing reservoir of trained operators, technicians, and electronic experts; and continuation and extension of the amateur's unique ability to enhance international goodwill. *See* 47 C.F.R. § 97.1(a)-(e).

<sup>10</sup> *See* 47 C.F.R. § 97.3(a)(1).

<sup>11</sup> *See* 47 U.S.C. § 153(2); 47 C.F.R. § 97.3(a)(4).

<sup>12</sup> *See* 47 C.F.R. § 97.111(a)(1).

<sup>13</sup> *See* 47 C.F.R. § 97.401(a).

5. The *Radio Regulations* require that operators of amateur service stations be licensed.<sup>14</sup> Prior to July 2003, the *Radio Regulations* generally required that any person seeking a license to operate the apparatus of an amateur station prove that he or she is able to correctly send and receive texts in Morse code, but countries were allowed to waive this requirement for persons operating amateur stations using only frequencies above 30 MHz.<sup>15</sup> Thus, countries could issue "no code" amateur service operator licenses, *i.e.*, amateur service operator licenses that did not require the licensee to pass a telegraphy test, for stations using only amateur service frequencies above 30 MHz, while requiring demonstration of Morse code proficiency by persons holding an amateur operator license that authorized transmitting privileges on frequencies below 30 MHz.<sup>16</sup>

6. The International Telecommunication Union (ITU), under the auspices of the United Nations, convened the WRC-03 from June 9 to July 4, 2003, in Geneva, Switzerland. The actions taken at the WRC-03 were published as the *WRC-03 Final Acts*, and are codified in the ITU *Radio Regulations*.<sup>17</sup> At the WRC-03, the international regulations applicable to the amateur service were revised in a comprehensive manner, resulting in more streamlined, updated regulations that reflect modern amateur radio communication techniques and technologies.<sup>18</sup> Among other things, the *WRC-03 Final Acts* amended Article 25 of the *Radio Regulations* to allow a country to determine whether it would require a person seeking an amateur radio operator license to demonstrate the ability to send and receive texts in Morse code signals.<sup>19</sup> The effect of this revision to Article 25 was to eliminate the international requirement that a person demonstrate Morse code proficiency in order to qualify for an amateur radio operator license with transmitting privileges on frequencies below 30 MHz.

7. Our rules currently require an examinee to pass a Morse code telegraphy test for certain classes of amateur radio operator licenses. The petitions before us represent efforts of individual amateur radio operators and their organizations to revise our amateur service rules and license structure to reflect the *Radio Regulation* revisions adopted at WRC-03. On the basis of the changes in the *Radio Regulations* and the petitions before us, we conclude that the issue of the appropriate requirements for an individual to obtain an amateur radio operator license is ripe for consideration.

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<sup>14</sup> See *WRC-03 Final Acts*, Article 25.6.

<sup>15</sup> See *Final Acts of the World Radiocommunication Conference (WRC-97)*, Geneva, Switzerland, 1997, and *Final Acts of the World Radiocommunication Conference, (WRC-00)*, Istanbul, 2000, *Radio Regulation S25.5*. This *Radio Regulation* stated, "Any person seeking a license to operate the apparatus of an amateur station shall prove that he is able to send correctly by hand and to receive correctly by ear texts in Morse code signals. The administration concerned may, however, waive this requirement in the case of stations making use exclusively of frequencies above 30 MHz."

<sup>16</sup> Individual administrations were permitted to waive the Morse code requirement for stations making use only of frequencies above 30 MHz because transmissions in this part of the radio spectrum are generally used for shorter distance communications, rather than international communications. The segment of the radio spectrum between 3 and 30 MHz is commonly referred to as the High Frequency (HF) band. The segment of the radio spectrum between 300 kHz and 3 MHz is the Medium Frequency (MF) band. See 47 C.F.R. § 2.101.

<sup>17</sup> See ITU *Radio Regulations*, Edition of 2004 (ITU *Radio Regulations*).

<sup>18</sup> See *WRC-03 Final Acts*, Article 25; see also ARRL Petition at 2-5.

<sup>19</sup> This regulation states, "Administrations shall determine whether or not a person seeking a license to operate an amateur station shall demonstrate the ability to send and receive texts in Morse code signals." *WRC-03 Final Acts*, Article 25.5.

### III. DISCUSSION

#### A. Amateur Radio Operator Licensing Requirements

8. *Background.* The last major restructuring of our amateur service operator licensing and examination system rules took place in 2000.<sup>20</sup> The current structure of operator license classes, and the requirements for obtaining these licenses, were developed to reflect the shared view of many in the amateur service community that the Commission should simplify the license structure for the amateur radio service while maintaining additional frequency privileges as an incentive for amateur radio operators to advance their communication and technical skills.<sup>21</sup> Presently, individuals may qualify for three classes of operator licenses: the Technician, General, and Amateur Extra Class licenses.<sup>22</sup> In addition, holders of three discontinued classes of operator licenses -- the Novice, Technician Plus, and Advanced Class operator licenses -- are grandfathered, and retain their operating privileges.<sup>23</sup> As a licensee advances or "upgrades" to a higher class operator license, the licensee earns more frequency privileges.<sup>24</sup> To qualify for a Technician Class operator license, an applicant must pass a thirty-five question written examination concerning the privileges of this license (Element 2).<sup>25</sup> To qualify for a General Class operator license, an applicant must pass an additional<sup>26</sup> thirty-five question written examination concerning the privileges of the General Class operator license (Element 3), and a five words-per-minute (wpm)<sup>27</sup> telegraphy examination.<sup>28</sup> To qualify for an Amateur Extra Class operator license, an applicant must pass the examination elements required for a General Class operator license and an additional fifty question written examination concerning the privileges of the Amateur Extra Class operator license (Element 4).<sup>29</sup>

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<sup>20</sup> See 1998 Biennial Regulatory Review -- Amendment of Part 97 of the Commission's Amateur Service Rules, *Report and Order*, WT Docket No. 98-143, 15 FCC Rcd 315 (1999) (*Restructure Report and Order*); *Memorandum Opinion and Order*, 16 FCC Rcd 8076 (2001) (*Restructure Memorandum Opinion and Order*).

<sup>21</sup> *Restructure Report and Order*, 15 FCC Rcd at 322 ¶¶ 12-13.

<sup>22</sup> See 47 C.F.R. §§ 97.501.

<sup>23</sup> See 47 C.F.R. § 97.9(a).

<sup>24</sup> See 47 C.F.R. § 97.301. In the amateur service license structure, an individual advances to a higher class of operator license by passing an examination that demonstrates increased telegraphy proficiency and/or more technical expertise than what the individual's present license class requires. There are four examination elements: the three written examinations required for the three operator licenses, and the telegraphy examination. See 47 C.F.R. § 97.503. An examinee passes different combinations of examination elements to qualify for the various operator licenses.

<sup>25</sup> See 47 C.F.R. § 97.503(b)(1). The written examinations consist of multiple-choice questions. See 1998 Biennial Regulatory Review -- Amendment of Part 97 of the Commission's Amateur Service Rules, *Notice of Proposed Rule Making*, WT Docket No. 98-143, 13 FCC Rcd 15798, 15807 ¶ 26 (1998).

<sup>26</sup> Licensees who previously have passed an examination required for a higher class of operator license receive examination credit for the previously-passed examination. See 47 C.F.R. § 97.505.

<sup>27</sup> A "word" consists of five letters of the alphabet. See 47 C.F.R. § 97.507(d).

<sup>28</sup> See 47 C.F.R. § 97.503(b)(3).

<sup>29</sup> See 47 C.F.R. § 97.501(a).

9. *Petitions.* The largest group of petitioners requests that we eliminate all telegraphy proficiency testing requirements from the Commission's amateur radio operator license examination rules.<sup>30</sup> Some argue that the requirement no longer serves any valid regulatory purpose, in light of the WRC-03 changes to the *Radio Regulations*. For example, the Ward Petition notes that no clear rationale for using Morse code proficiency as a "gatekeeper" licensing requirement has emerged from the thousands of public comments filed in past Commission proceedings that considered this issue,<sup>31</sup> and that the Commission's rules cannot and do not attempt to require amateur radio operators to communicate using Morse code.<sup>32</sup> The No Code International (NCI) Petition states that communication by Morse telegraphy is a recreational activity that reflects operator choice and preference, rather than necessity.<sup>33</sup> The NCI Petition also claims that the Commission has previously determined that telegraphy proficiency, as a licensing requirement, does not comport with the basis and purpose of the amateur service,<sup>34</sup> and argues that compliance with the prior *Radio Regulations* was the reason that the Commission did not eliminate the telegraphy requirement earlier.<sup>35</sup> The Coppola Petition argues that removing the telegraphy examination requirement would further enhance the value of the amateur service to the public as a voluntary non-commercial service,<sup>36</sup> and result in expanding the existing reservoir of trained operators, technicians, and electronic experts within the amateur radio service,<sup>37</sup> while doing nothing to prevent use of telegraphy on the air or otherwise prevent those interested in pursuing telegraphy proficiency from doing so.<sup>38</sup>

10. Others argue that the requirement is out-of-date. The first National Conference of Volunteer Examiner Coordinators (NCVEC) Petition notes that use of Morse code has become obsolete in practically all other contemporary communications systems due to the emergence of satellite and digital communication technologies.<sup>39</sup> NCVEC argues that Morse code testing is an unnecessary burden on applicants because most applicants who pass the code examination never use code for communications on the airwaves,<sup>40</sup> and on volunteer examiners (VEs) and VE coordinators (VECs)

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<sup>30</sup> See Coppola Petition at 1; Holliday Petition at 1; Ward Petition at 1; NCI Petition at 1; NCVEC Petition I at 1; Speroni Petition at 1, 4; Rightsell-Kholer Petition at 8. The Speroni and Rightsell-Kholer petitions were placed on public notice on October 7, 2003. See *Public Notice*, Report No. 2634 (rel. Oct. 7, 2003). The other petitions were placed on public notice on August 29, 2003. See *Public Notice*, Report No. 2625 (rel. Aug. 29, 2003).

<sup>31</sup> Ward Petition at 2 (citing 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 FCC Rcd 7631 (1990); 1998 Biennial Regulatory Review -- Amendment of Part 97 of the Commission's Amateur Service Rules, *Notice of Proposed Rule Making*, WT Docket No. 98-143, 13 FCC Rcd 15798 (1998)).

<sup>32</sup> *Id.*

<sup>33</sup> NCI Petition at 3, 6.

<sup>34</sup> *Id.* at 7 (citing *Restructure Report and Order*, 15 FCC Rcd at 333 ¶ 30).

<sup>35</sup> *Id.* at 3, 10.

<sup>36</sup> See Coppola Petition at 2.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 3.

<sup>39</sup> See NCVEC Petition I at 2.

<sup>40</sup> *Id.* at 3.

because these examinations require extensive preparation and special equipment to administer properly.<sup>41</sup> NCVEC also argues that Morse code testing should be ended because the amateur radio operator examination process does not require a practical demonstration in the ability to use any other mode of communication.<sup>42</sup> The Holliday Petition argues that although a Morse code proficiency requirement was reasonable fifty years ago, continuing the Morse code examination requirement serves no useful purpose in the twenty-first century,<sup>43</sup> and that the Morse code examination requirement limits the number of people, especially those who are handicapped,<sup>44</sup> who can take advantage of amateur radio as a hobby.<sup>45</sup>

11. Two petitions advocate eliminating telegraphy proficiency as a licensing prerequisite, but maintaining a role for it in the examination process. The Speroni Petition proposes that we retain the requirement only for licensees desiring to communicate using Morse code.<sup>46</sup> The Rightsell-Kholer Petition suggests that Morse code proficiency be integrated into amateur radio testing by allowing those who demonstrate Morse code proficiency to receive credit toward the minimum passing score for their license examination(s).<sup>47</sup>

12. Other petitioners request that we amend our rules to require Morse code testing only for the Amateur Extra Class operator license.<sup>48</sup> The Reich Petition argues that this requirement is needed for the most advanced and highest class of amateur radio operator license to "protect the future of CW"<sup>49</sup> and other future digital modes used in amateur radio.<sup>50</sup> Reich also notes that removing the telegraphy

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<sup>41</sup> *Id.* at 4. In this regard, NCVEC notes that it is a difficult task for VEs and VECs to prepare a series of messages sufficient to comply with our rules. See 47 C.F.R. §§ 97.503(a), 97.507(d).

<sup>42</sup> NCVEC Petition I at 3.

<sup>43</sup> See Holliday Petition at 2.

<sup>44</sup> *Id.* The petitioner does not explain how or why a Morse code tests limits a handicapped individual's ability to obtain an amateur radio license. Moreover, we note that our rules address testing of individuals with disabilities, by requiring appropriate accommodations. See 47 C.F.R. § 97.509(k).

<sup>45</sup> See Holliday Petition at 2.

<sup>46</sup> See Speroni Petition at 1, 4. The Speroni Petition was placed on public notice on October 7, 2003. See *Public Notice*, Report No. 2634 (rel. Oct. 7, 2003).

<sup>47</sup> See Rightsell-Kholer Petition at 8.

<sup>48</sup> See Reich Petition at 1; PRARL Petition at 1-2; Roux Petition at 1; ARRL Petition at 2. The Reich Petition was placed on public notice on August 29, 2003. See *Public Notice*, Report No. 2625 (rel. Aug. 29, 2003). The PRARL and Roux petitions were placed on public notice on October 7, 2003. See *Public Notice*, Report No. 2634 (rel. Oct. 7, 2003). The ARRL Petition was placed on public notice on March 24, 2004. See *Public Notice*, Report No. 2651 (rel. Mar. 24, 2004).

<sup>49</sup> The term 'CW' refers to International Morse code telegraphy emissions having certain emission designators. See 47 C.F.R. § 97.3(c)(1). The abbreviation stands for continuous wave. Continuous wave signals are unmodulated carrier frequencies by which information is transmitted by turning the carrier on or off in recognized patterns. See Amendment of Parts 2 and 97 of the Commission's Rules to Create a Low Frequency Allocation for the Amateur Radio Service, *Notice of Proposed Rule Making*, ET Docket No. 02-98, 17 FCC Rcd 8954, 8957 n.17 (2002).

<sup>50</sup> See Reich Petition at 1.

examination only from the General Class examination requirements would not require significant changes in current amateur radio written examinations or examination study guides, thereby protecting publishers of amateur radio-related study material and textbooks.<sup>51</sup> PRARL argues that Amateur Extra Class licensees should at least be able to communicate in Morse code at a reasonable speed during an emergency situation when other modes of communication are not effective, and that requiring a proficiency of five wpm would ensure a basic knowledge of Morse code, which is a stepping stone toward further practice and high speed proficiency.<sup>52</sup> ARRL argues that "a demonstration of capability in Morse telegraphy is an element of communications operating skill that should be included in the portfolio of operating skills demonstrated by the most accomplished radio amateurs," *i.e.*, the Amateur Extra Class licensees.<sup>53</sup> The Roux Petition agrees that the Morse code requirement should apply only to Amateur Extra Class operator licenses.<sup>54</sup> In addition, Roux requests that the Commission amend the rules to increase this requirement from five wpm to fifteen wpm.<sup>55</sup>

13. Two other petitioners request that we increase the Amateur Extra Class operator license requirement for Morse code proficiency.<sup>56</sup> They also ask that we that we maintain the present Morse code examination requirement for the General Class operator license.<sup>57</sup> In support of these requests, FISTS states that communicating using Morse code is the second-most popular operating activity in amateur radio and that Morse code is used by many amateur stations in numerous operating activities.<sup>58</sup> FISTS also argues that possessing the skill to send and receive Morse code at a higher speed is imperative if an operator is to communicate effectively during an emergency situation<sup>59</sup> because Morse-code skilled

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<sup>51</sup> *Id.*

<sup>52</sup> *See* PRARL Petition at 2.

<sup>53</sup> *See* ARRL Petition at 20.

<sup>54</sup> *See* Roux Petition at 1.

<sup>55</sup> *Id.* The petition does not provide any explanation regarding why the Morse code proficiency for an Amateur Extra Class operator license should be increased to fifteen wpm.

<sup>56</sup> *See* FISTS Petition at 2, 14 (advocating increasing the licensing requirement to twelve wpm); Lowrance Petition at 2 (advocating increasing this requirement to thirteen wpm). The FISTS Petition was placed on public notice on October 7, 2003. *See Public Notice*, Report No. 2634 (rel. Oct. 7, 2003). The Lowrance Petition was placed on public notice on March 24, 2004. *See Public Notice*, Report No. 2651 (rel. Mar. 24, 2004).

<sup>57</sup> *See* FISTS Petition at 8; Lowrance Petition at 2. Other petitions request that we maintain the present Morse code examination requirement for the General and Amateur Extra Class operator license, but eliminate the telegraphy proficiency requirement with respect to the additional privileges a Technician Class licensee obtains upon passing the Morse code examination (*see* note 109, *infra*). *See* Beauregard Petition at 1 (arguing that allowing Technician Class licensees operating privileges in certain HF bands will "provide an incentive more powerful than that of the current VHF and above privileges" for these licensees to learn Morse code and upgrade to a General or Amateur Extra Class operator license) (placed on public notice on August 29, 2003, *see Public Notice*, Report No. 2625 (rel. Aug. 29, 2003)); RAF Petition at 6 (arguing that changing the telegraphy requirement for the General or Amateur Extra Class operator licenses "creates a high risk of corrupting the integrity of the amateur service, and disenfranchising those very radio amateurs who have long contributed to the service") (placed on public notice on March 24, 2004, *see Public Notice*, Report No. 2651 (rel. Mar. 24, 2004)); Young Petition at 2 (placed on public notice on October 7, 2003, *see Public Notice*, Report No. 2634 (rel. Oct. 7, 2003)).

<sup>58</sup> *See* FISTS Petition at 4.

<sup>59</sup> *Id.* at 9.

amateur radio operators can communicate using the code even when voice modes of communications fail,<sup>60</sup> and that proficiency in Morse code assists in developing technical skills, and encourages construction and design of communications equipment.<sup>61</sup> Similarly, the Lowrance Petition asserts that Morse code proficiency should be retained as a licensing requirement because this proficiency "is a key component of communication for our amateur service responsibilities under and within [the] Department of Homeland Security" and because "during difficult communication conditions, especially when voice and digital communication fail, Morse code will be key as a back-up communication mode for brief secure-coded and non-secure messages."<sup>62</sup>

14. Napurano requests that we retain and preserve permanently the present Morse code proficiency requirements for individuals to obtain amateur radio licenses that authorize privileges below 30 MHz.<sup>63</sup> In support of this request, the petition states that Morse code is the most accurate, reliable, and economical form of radio communications; it is efficient in terms of bandwidth occupancy and frequency utilization; and is the only form of modulation able to communicate information under conditions of poor propagation.<sup>64</sup> He argues that to thousands of American amateur radio operators, the ability to communicate using Morse code "is the very essence of amateur radio and without it, amateur radio does not exist."<sup>65</sup>

15. *Discussion.* The *Radio Regulations* contain certain requirements that a country's administration<sup>66</sup> must satisfy before granting an applicant an amateur radio license. Specifically, Article 25.6 requires that administrations verify the operational and technical qualifications of any person wishing to operate an amateur station.<sup>67</sup> We believe that Article 25.6 is satisfied by requiring applicants for an amateur radio operator license to pass written examinations covering relevant subject matter. Because the *Radio Regulations* no longer mandate a telegraphy requirement,<sup>68</sup> each country's administration must decide whether to require telegraphy proficiency for an amateur radio license.

16. In the *Restructure Report and Order*, the Commission concluded that the public interest would be served best by reducing the telegraphy examination requirement for an amateur radio operator license to the minimum standard that would satisfy the *Radio Regulations*, namely, the requirement that

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<sup>60</sup> *Id.* at 5.

<sup>61</sup> *Id.* at 6-7. In this regard, FISTS notes that stations capable of transmitting Morse code can be built with simple circuitry, basic tools, and affordable test equipment. *Id.* at 6.

<sup>62</sup> See Lowrance Petition at 1-2. The petition does not provide any support for the contention that the amateur service has Department of Homeland Security responsibilities.

<sup>63</sup> See Napurano Petition at 1. The Napurano Petition was placed on public notice on October 7, 2003. See *Public Notice*, Report No. 2634 (rel. Oct. 7, 2003).

<sup>64</sup> See Napurano Petition at 2.

<sup>65</sup> *Id.* at 3.

<sup>66</sup> An administration is any governmental department or service responsible for discharging obligations under the *Radio Regulations*. See 47 C.F.R. § 2.1.

<sup>67</sup> See WRC-03 Final Acts, Article 25.6.

<sup>68</sup> See WRC-03 Final Acts, Article 25.5.

a control operator of a station prove that he or she can ensure the proper operation of that station.<sup>69</sup> Consequently, the Commission eliminated as licensing requirements the thirteen wpm and twenty wpm telegraphy examinations, and retained only the minimum telegraphy requirement of five wpm.<sup>70</sup> As a number of petitioners note, the Commission could not have eliminated the five wpm examination in the *Restructure Report and Order*, due to the then-effective *Radio Regulations* requirement.<sup>71</sup>

17. As discussed previously, one of the fundamental purposes underlying Part 97 of the Commission's rules is to accommodate the amateur radio operator's proven ability to contribute to the advancement of the radio art.<sup>72</sup> Our review of the petitions and comments in the present proceeding finds that the majority agree with the Commission's observation in the *Restructure Report and Order* that an individual's ability to demonstrate increased Morse code proficiency is not necessarily indicative of his or her ability to contribute to the advancement of the radio art.<sup>73</sup> The record before us shows that the amateur service community generally supports removing the telegraphy requirement as one of the requirements for General Class operator privileges.<sup>74</sup> Accordingly, we propose to revise Section 97.501<sup>75</sup> to remove the five wpm telegraphy examination from the requirements for a General Class operator license.

18. As discussed above, some petitioners that support eliminating the telegraphy requirement for a General Class operator license nonetheless advocate retaining a telegraphy requirement for the Amateur Extra Class operator license.<sup>76</sup> We note that numerous commenters disagree, arguing that the requirement serves no purpose,<sup>77</sup> is not essential to the safe and effective operation of an amateur station,<sup>78</sup> and discourages individuals from becoming amateur radio operators.<sup>79</sup> Others state that telegraphy deserves no greater emphasis in the examination system than any other mode of

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<sup>69</sup> See *Restructure Report and Order*, 15 FCC Rcd at 329-30 ¶ 25 (stating that greater telegraphy proficiency is not necessarily indicative of an individual's ability to contribute to the advancement of the radio art).

<sup>70</sup> *Id.*

<sup>71</sup> See, e.g., ARRL Petition at 5; NCI Petition at 3; NCVET Petition I at 6.

<sup>72</sup> See 47 C.F.R. § 97.1(b).

<sup>73</sup> See *Restructure Report and Order*, 15 FCC Rcd at 329 ¶ 25.

<sup>74</sup> See, e.g., David P. Johnson Comments RM-10867 at 1; Michael Polia Comments RM-10867 at 1; Members of the Dial Radio Club, Middletown, OH Comments RM-10867 at 1; Ernest W. Howard, Jr., Comments RM-10867 at 1.

<sup>75</sup> 47 C.F.R. § 97.501.

<sup>76</sup> See, e.g., ARRL Petition at 2; PRARL Petition at 1-2; Reich Petition at 1; Beauregard Petition at 1.

<sup>77</sup> See, e.g., Kipling Reynolds Comments RM-10867 at 1; Marty Kubis Comments RM-10867 at 1; Robert Wagner Comments RM-10867 at 1; Bob Stuart Comments RM-10867 at 1; W6AG Comments RM-10809 at 1; Sammy Smith Comments RM-10809 at 1; James B. Wiley KL7CC Comments RM-10809 at 1.

<sup>78</sup> See, e.g., Patrick W. Tice Comments RM-10867 at 1; Robert Y. Felt Comments RM-10867 at 1; Scott Moore Comments RM-10867 at 1.

<sup>79</sup> See James K. White Comments RM-10867 at 1; Richard L. Tannehill Comments RM-10867 at 1-3.

communication.<sup>80</sup> As discussed below, we tentatively conclude that, given the changes in the *Radio Regulations*, maintaining a telegraphy requirement for the Amateur Extra Class license would not be in the public interest. Therefore, we propose to remove the telegraphy examination requirement as one of the requirements for the Amateur Extra Class operator license.<sup>81</sup>

19. We do not find persuasive ARRL's argument that Morse telegraphy capability must be included in the operating skills demonstrated by Amateur Extra Class licensees. While ARRL describes the five-wpm telegraphy examination as "reflecting a rudimentary ability to utilize Morse telegraphy,"<sup>82</sup> we are not persuaded that it is in the public interest to require examinees to demonstrate an ability to exchange messages in one particular communications technology when the amateur service rules do not require operators to use this technology and when the trend in amateur communications is to use voice and digital technologies for exchanging messages. Rather, we believe that because the international requirement for telegraphy proficiency has been eliminated, we should treat Morse code telegraphy as a communications technique with the same standing as other modulation techniques in the amateur service licensing requirements. Moreover, given that there is no requirement that a licensee who has passed a telegraphy examination actually use telegraphy for communications or otherwise maintain proficiency, successful completion of a one-time telegraphy examination offers no guarantee of future proficiency.

20. Likewise, we are not persuaded by PRARL's argument that telegraphy proficiency should be required for the Amateur Extra Class operator license because amateur stations may provide or assist with emergency communications.<sup>83</sup> In this regard, we note that the Commission previously addressed this argument, and concluded that most emergency communication today is performed using voice, data, or video modes, and that most amateur radio operators who choose to provide emergency communication do so using voice or digital modes of communication, because information can be exchanged much faster using modes of communication other than telegraphy.<sup>84</sup> Additionally, we note that although many amateur radio operators choose to use their communications ability to assist the public by providing communications during an emergency, and we continue<sup>85</sup> to encourage such activity, there is no requirement that they do so.

## B. Operating Privileges

21. *Background.* Prior to 2000, our rules provided for a six-class amateur service operator license structure in which an individual advanced by passing examinations that demonstrate increased telegraphy proficiency and/or technical expertise.<sup>86</sup> In the *Restructure* proceeding, the majority of

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<sup>80</sup> See, e.g., Peter F. Trotter Comments RM-10867 at 1; Brian Fletcher Comments RM-10867 at 1; William H. Simmons Comments RM-10867 at 1; Randy Moore Comments RM-10809 at 1.

<sup>81</sup> Given that we are proposing to eliminate the telegraphy requirement for the Amateur Extra Class operator license, we deny the requests of FISTS, Lowrance, and Roux to raise the required proficiency level.

<sup>82</sup> ARRL Petition at 20; see also Reich Petition at 1; Roux Petition at 1.

<sup>83</sup> See PRARL Petition at 2.

<sup>84</sup> See *Restructure Report and Order*, 15 FCC Rcd at 334 ¶ 31.

<sup>85</sup> See, e.g., Allocation of the 219-220 MHz Band for Use by the Amateur Radio Service, *Notice of Proposed Rule Making*, ET Docket No. 93-40, 8 FCC Rcd 2352, 2353 ¶ 7 (1993).

<sup>86</sup> See *Restructure Report and Order*, 15 FCC Rcd at 322 ¶ 13; see also 47 C.F.R. § 97.9(a) (1999).

commenters requested that the Commission streamline and simplify the amateur service license structure.<sup>87</sup> The Commission agreed, and concluded that a three-class license structure would provide an incentive for licensees to continue the educational opportunities offered by amateur radio and to advance their communication and technical skills, and would provide a sufficient number of license classes so that the fundamental purposes underlying the amateur service rules would not be compromised.<sup>88</sup> Therefore, the Commission adopted, on a going-forward basis, a three-class operator license structure consisting of the Technician, General, and Amateur Extra Class operator licenses.<sup>89</sup> Novice, Technician Plus, and Amateur Extra Class licensees retained their operating privileges.<sup>90</sup>

22. Currently, the Novice Class license authorizes limited operating privileges in segments of four HF amateur service bands and segments of two amateur service bands above 30 MHz.<sup>91</sup> The Technician Class license authorizes all operating privileges available to amateur radio operators on all amateur service frequencies above 30 MHz.<sup>92</sup> An individual who holds a Technician Class license and, additionally, has passed a five wpm telegraphy examination is authorized Technician Class privileges plus the Novice Class licensee HF privileges.<sup>93</sup> The General Class operator license authorizes all privileges of the Technician Class license plus frequency privileges in one medium frequency (MF) and eight HF bands that are authorized to amateur stations.<sup>94</sup> An Advanced Class operator license authorizes General Class privileges plus additional frequency segments that are primarily used for voice communications.<sup>95</sup> An Amateur Extra Class license authorizes the use of all spectrum allocated to the amateur service.<sup>96</sup>

23. *Petitions.* Several petitioners request that we authorize additional operating privileges to certain existing license classes, particularly the Technician Class license. FISTS proposes that we authorize Technician Class licensees to transmit digital communications on the frequency segments of the HF bands currently authorized to Novice and Technician Plus Class licensees.<sup>97</sup> FISTS argues that allowing Technician Class licensees these HF privileges would allow them to participate in the explosive growth in digital applications occurring on the HF bands.<sup>98</sup> Coppola proposes that the rules

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<sup>87</sup> See *Restructure Report and Order*, 15 FCC Rcd at 324 ¶ 16.

<sup>88</sup> *Id.* at 324 ¶ 16.

<sup>89</sup> *Id.* at 322 ¶ 13.

<sup>90</sup> *Id.* at 323 ¶ 15, 326-27 ¶¶ 20-21.

<sup>91</sup> See 47 C.F.R. § 97.301(e). These privileges include, among others, authority to control a station transmitting telegraphy emission types in the 80, 40, 15, and 10 meter (m) amateur bands, and data and phone (voice) emission types in the 10 m band.

<sup>92</sup> See 47 C.F.R. §§ 97.301(a).

<sup>93</sup> See 47 C.F.R. § 97.301(a), (e).

<sup>94</sup> See 47 C.F.R. § 97.301(d).

<sup>95</sup> See 47 C.F.R. § 97.301(c).

<sup>96</sup> See 47 C.F.R. § 97.301(b). Amateur Extra Class licensees are authorized 450 kHz more spectrum in the HF bands than General Class licensees.

<sup>97</sup> See FISTS Petition at 8.

<sup>98</sup> *Id.* at 8.

be amended to authorize Technician Class licensees privileges on the segment of the 10 meter (m) amateur service band currently authorized to Technician Plus Class licensees.<sup>99</sup> The Rightsell-Kholer Petition proposes that we authorize Novice, Technician, and Technician Plus Class licensees data communication and telegraphy frequency privileges in the 80, 40, 15, and 10 m amateur service bands, and an expanded frequency segment for voice communications in the 10 m amateur service band, in addition to the privileges currently authorized Technician Plus Class licensees in the HF amateur service bands.<sup>100</sup> In support of this request, petitioners argue that their proposal would provide encouragement to all amateur service licensees to take advantage of educational opportunities and individual experimentation, thus further enhancing their ability to contribute to the radio art.<sup>101</sup> The RAF Petition proposes that we amend the rules to allow Technician Class licensees restricted HF telephony, data, image, and telegraphy privileges.<sup>102</sup> Specifically, RAF requests that we authorize Technician Class licensees restricted power narrowband data and telegraphy privileges on segments of the 80, 40, 15, and 10 m amateur service bands, voice and image privileges on the 10 and 15 m amateur service bands, and radioteletype, data, telegraphy, voice and image privileges on the 1900-2000 kHz segment of the 160 m band.<sup>103</sup> RAF argues that amending the rules in this manner would motivate licensees to take on the task of self-training and improvement needed to upgrade to the General Class operator license.<sup>104</sup> Other petitioners more generally request that we eliminate the difference between the Technician Class and Technician Plus Class licenses by authorizing Technician Class licensees the HF privileges now authorized to Technician Plus Class licensees, as a logical reflection of the elimination of the international requirement of Morse code proficiency.<sup>105</sup>

24. *Discussion.* As discussed above, the current structure of operator license classes and their associated operating privileges was developed so that additional frequency privileges are a significant incentive for amateur radio operators to advance their communication and technical skills.<sup>106</sup> Requests that we authorize additional operating privileges to Novice and Technician Plus Class licensees we believe are inconsistent with this incentive licensing structure because the requests, if granted, would lessen the additional privileges a licensee would receive when they upgraded. In this regard, we note that the additional privileges the petitions request we authorize these licensees, specifically the additional frequency bands and emission types in the MF and HF bands, are currently authorized to General Class licensees, and that Novice and Technician Plus Class licensees can earn these privileges

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<sup>99</sup> See Coppola Petition at 5. We note this frequency segment also is authorized to Novice Class licensees.

<sup>100</sup> See Rightsell-Kholer Petition at 5-6.

<sup>101</sup> *Id.* at 2.

<sup>102</sup> See RAF Petition at 2.

<sup>103</sup> *Id.* at 7-8.

<sup>104</sup> *Id.* at 6.

<sup>105</sup> See Beauregard Petition at 1 (requesting telegraphy (commonly referred to as "CW") privileges in the 3675-3725 kHz, 7100-7150 kHz and 21100-21200 kHz frequency segments; CW, radioteletype (RTTY), and data privileges in the 28100-28300 kHz frequency segment; CW, phone, and image privileges in the 3850-3900 kHz and 7225-7300 kHz frequency segments; and CW and single sideband (SSB) privileges in the 28300-28500 kHz frequency segment. We note that some of these emission types and frequency segments currently are not authorized to Technician or Technician Plus Class licensees.); NCI Petition at 16; NCI Petition at 16; PRARL Petition at 1.

<sup>106</sup> *Restructure Report and Order*, 15 FCC Rcd at 322 ¶¶ 12-13.

by passing only one or two written examinations. We also note that the petitions assume that specific narrow frequency segments in certain HF bands will remain authorized to Novice and Technician Class licensees. In the *Phone Band Expansion NPRM*, however, the Commission proposed to eliminate the Novice and Technician Plus Class telegraphy sub-bands and, in their place, authorize Novice and Technician Plus Class licensees to control an amateur station transmitting in any portion of the 80, 40 and 15 m amateur service bands that provide for telegraphy operation by General Class licensees.<sup>107</sup> We note that the combined effect of the requests in the aforementioned petitions and the *Phone Band Expansion NPRM*, if adopted, would be to authorize Technician Class licensees significantly more spectrum in the HF bands than the petitioners request. In that additional frequency privileges and the authority to transmit messages using additional emission types are major incentives for licensees to upgrade to a higher class of operator license, and we do not want to diminish this incentive, we conclude that it would not be in the public interest to propose authorizing additional HF frequency privileges to Technician Class licensees. Accordingly, we deny these requests.

### C. Number of Amateur Radio Operator License Classes

25. *Background.* To transition to the three-class license structure, the Commission grandfathered Novice, Technician Plus, and Advanced Class licensees.<sup>108</sup> Specifically, no new Novice or Advanced Class licenses would be issued, but these licensees would continue to receive examination credit for the telegraphy element, thereby providing an incentive for them to upgrade to the General or Amateur Extra Class operator licenses.<sup>109</sup> The Commission also decided to renew Technician Plus Class licenses as Technician Class licenses.<sup>110</sup> The Commission rejected requests that Novice and Technician Plus Class licensees be automatically upgraded to General Class licensees or that Advanced Class licensees be automatically upgraded to the Amateur Extra Class operator license.<sup>111</sup> Rather, the Commission accepted the argument that licensees should not receive additional privileges without passing the required examinations.<sup>112</sup> Subsequently, the Commission denied a request that it authorize additional telegraphy and phone privileges to Novice and Technician Plus Class amateur service licensees, noting, among other things, that these licensees can obtain access to significantly more spectrum by upgrading to the General or Amateur Extra Class.<sup>113</sup> We note that since the *Restructure Report and Order* became effective, the number of Novice Class licensees indeed has declined by

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<sup>107</sup> See Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Services, *Notice of Proposed Rulemaking*, WT Docket No. 04-140, 19 FCC Rcd 7293, 7300 ¶ 11 (2004) (*Phone Band Expansion NPRM*).

<sup>108</sup> *Id.* at 327 ¶ 21.

<sup>109</sup> See 47 C.F.R. § 97.505(a)(5).

<sup>110</sup> *Restructure Report and Order*, 15 FCC Rcd at 326 ¶ 20. Because Technician Plus Class licensee privileges included the privileges authorized Novice Class licensees, Technician Class licensees that have passed a telegraphy examination (including, but not limited to, Technician Plus Class licensees) also receive the privileges formerly authorized Novice Class licensees, so that no licensee lost any operating privileges as a result of the Commission's decision. See 47 C.F.R. § 97.301(a), (e).

<sup>111</sup> *Restructure Report and Order*, 15 FCC Rcd at 323 ¶ 15.

<sup>112</sup> *Id.*

<sup>113</sup> See *Phone Band Expansion NPRM*, 19 FCC Rcd at 7300 ¶¶ 12-14.

almost 22,000<sup>114</sup> and that the number of Advanced Class licensees has declined by almost 27,000 licensees, while the number of Amateur Extra Class licensees has increased by over 32,000.<sup>115</sup>

26. *Petitions.* Two petitioners request that we change the number of operator license classes in the amateur service license structure.<sup>116</sup> The Young Petition requests that we add a fourth operator license, the Technician Plus Class license, to the present license structure,<sup>117</sup> with Technician Plus Class licensees being required to pass only the General Class operator license written examinations.<sup>118</sup> Young argues that such a change would provide limited relief from the Morse code examination requirement for one class of operator license.<sup>119</sup> The Roux Petition requests that we establish a two-class amateur operator license structure, consisting of the General and Amateur Extra Class operator licenses,<sup>120</sup> arguing that such a license structure would be easier to understand; require less paperwork for the Commission, VEs and VECs;<sup>121</sup> and increase the number of amateur service licensees.<sup>122</sup>

27. Two petitioners request that we maintain a three-license structure, but replace the Technician Class license with a new introductory operator license.<sup>123</sup> Both argue that the Technician Class license should be replaced because the examination is overly comprehensive, and acts as a deterrent to newcomers.<sup>124</sup> The NCVEC Petition II proposes that we establish a new “Communicator Class” license as the new introductory amateur service operator license.<sup>125</sup> NCVEC claims that what

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<sup>114</sup> See <http://ah0a.org/FCC/Licenses.html> for licensing statistics. The amateur service database shows that as of May 31, 2005, a total of 28,384 amateur service licensees hold Novice Class operator licenses. The number of Novice Class licensees appears to be declining by about 3,000 licensees per year.

<sup>115</sup> See *id.* The amateur service database shows that the number of Advanced Class licensees has declined from 103,048 on March 30, 2000 to 76,128 on May 31, 2005. The amateur service database also shows that the number of Amateur Extra Class licensees has increased from 75,985 on March 30, 2000 to 106,693 on May 31, 2005.

<sup>116</sup> See Young Petition; Roux Petition.

<sup>117</sup> See Young Petition at 3.

<sup>118</sup> *Id.* at 4. Currently, an examinee must pass examination Elements 2 and 3 to qualify for a General Class operator license.

<sup>119</sup> *Id.* at 1.

<sup>120</sup> See Roux Petition at 1. The petition does not address how existing operator license classes would be integrated into the proposed license structure.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* Amateur Extra Class licensees would be authorized to use the current Amateur Extra Class-only Morse code sub-bands in this two-class license structure.

<sup>123</sup> See NCVEC II Petition; ARRL Petition.

<sup>124</sup> See NCVEC II Petition at 4; ARRL Petition at 9; see also Speroni Petition at 1, 4 (proposing to require an examinee to pass a test on the type or mode of communications that the licensee desires to use, on the grounds that the Technician Class operator license requires individuals to have knowledge of too many technologies, including technologies often of no interest to entry-level licensees).

<sup>125</sup> See NCVEC Petition II at 4-6. The NCVEC Petition II was placed on public notice on March 24, 2004. See *Public Notice*, Report No. 2651 (rel. Mar. 24, 2004).

attracts individuals to amateur radio appears to have changed over the years, as a consequence of which the current license system does not correlate particularly well with the present needs of licensees,<sup>126</sup> and it argues that a new introductory license would allow individuals who presently are not licensees access to amateur radio in a meaningful way and with enough privileges so that they can experience a reasonable cross-section of the various facets of amateur radio.<sup>127</sup> Similarly, the ARRL Petition proposes that we establish a new entry-level "Novice" Class operator license that would include VHF and UHF privileges, and limited HF telegraphy, data, and voice privileges without requiring a Morse code test.<sup>128</sup> In support of this request, the ARRL argues that the Technician Class license leaves newcomers to the amateur service in an isolated position because it allows them to conduct only local, rather than worldwide, communications, thus not providing many licensees the opportunity to pursue an active, progressive interest in amateur radio.<sup>129</sup>

28. The Rightsell-Kholer and RAF Petitions propose that we consolidate all licensees into three license classes by automatically upgrading Novice Class licensees to Technician Class licensees, and Advanced Class licensees to Amateur Extra Class.<sup>130</sup> In support of this request, the Rightsell-Kholer Petition argues that merging the Novice and Advanced Class operator licenses as proposed would simplify Commission recordkeeping and bring licensees in these two "orphaned" license classes back into the "mainstream of the amateur community."<sup>131</sup> RAF argues that Novice Class licensees should be upgraded to Technician Class licensees because expanded operating privileges "could result in many inactive Novices returning to the amateur service with a renewed interest," and Advanced Class licensees should be upgraded to the Amateur Extra Class because technically the examination elements for these two license classes are "perceived as minimally different."<sup>132</sup>

29. *Discussion.* As noted above, in the 1999 *Restructure Report and Order*, the Commission concluded that the public interest would best be served by adopting three classes of operator licenses in the amateur service.<sup>133</sup> That most of the petitioners in this proceeding request, either implicitly or explicitly, that the license structure retain three classes of operator licenses evidences strong support in the amateur service community for a three-class license structure. In addition, the Commission specifically considered and rejected a two-class or four-class operator license structure in the *Restructure Report and Order*.<sup>134</sup> The Commission concluded that a two-class license structure would not contain a sufficient number of license classes to provide an incentive for licensees to advance their skills in meaningful ways.<sup>135</sup> It also noted that a two- or four-class operator license structure was not

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<sup>126</sup> *Id.* at 2.

<sup>127</sup> *Id.* at 6.

<sup>128</sup> See ARRL Petition at 2, 16-18.

<sup>129</sup> *Id.* at 9-10, 13.

<sup>130</sup> See Rightsell-Kholer Petition at 5; RAF Petition 2-3.

<sup>131</sup> Rightsell-Kholer Petition at 2, 5.

<sup>132</sup> RAF Petition at 27, 29.

<sup>133</sup> See *Restructure Report and Order*, 15 FCC Rcd at 322 ¶¶ 12-13.

<sup>134</sup> *Id.* at 322 ¶ 13.

<sup>135</sup> *Id.*

supported by the amateur service community.<sup>136</sup> Moreover, we note that the petitions proposing these structures differentiate between license classes on the basis of passing a telegraphy examination, which we propose to eliminate for all operator licenses. For these reasons, and because neither the Roux Petition nor the Young Petition has shown that the current three-class license structure does not meet the needs of the amateur service community or otherwise does not serve the public interest, we do not believe it appropriate to alter the current number of amateur service operator license classes. Accordingly, we deny the Roux and Young petitions, to the extent they ask that we modify the number of license classes.

30. Regarding requests that we establish a new introductory class of operator license, we note that the requested license would authorize significantly greater HF privileges than the current Novice or Technician Plus Class license authorizes,<sup>137</sup> but significantly less than the General Class license currently authorizes.<sup>138</sup> We do not believe that such a new type of license is necessary because, as the Commission observed in the *Phone Band Expansion NPRM*, Novice and Technician Plus Class licensees can easily upgrade to the General Class, thereby obtaining access to significantly more spectrum than the requested new introductory class of operator license would authorize.<sup>139</sup> We also note that, if our proposal to eliminate telegraphy testing in the amateur service is adopted, a person who is not a licensee will be able to qualify for a General Class operator license by passing two written examinations, and that a person who is a Technician Class licensee will be able to qualify for a General Class operator license by passing one written examination.<sup>140</sup> We do not believe that these requirements are unreasonable, given the amount of spectrum available to General Class licensees. Accordingly, we deny the requests.

31. Nor are we persuaded by the proposals to automatically upgrade licensees to higher classes of operator licenses. As noted above, in the *Restructure Report and Order* proceeding, many commenters opposed licensees receiving additional privileges without passing the examination requirements,<sup>141</sup> and commenters have expressed the same view in this proceeding.<sup>142</sup> With regard to Technician and Technician Plus Class licensees licensed after 1987,<sup>143</sup> the questions on these examinations were oriented toward VHF and UHF operating activities, such as repeater operation and

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<sup>136</sup> *Id.*

<sup>137</sup> See 47 C.F.R. § 97.301(e).

<sup>138</sup> See 47 C.F.R. § 97.301(d).

<sup>139</sup> See *Phone Band Expansion NPRM*, 19 FCC Rcd at 7301 ¶ 14.

<sup>140</sup> See 47 C.F.R. § 97.501.

<sup>141</sup> *Restructure Report and Order*, 15 FCC Rcd at 323 ¶ 15.

<sup>142</sup> See, e.g., the following comments in RM-10867: John Mihalko Comments at 1; Charles Edmonson Comments at 1; Richard Esakow Comments at 1; Alan J. Wormser Comments at 1-2; Joseph Speroni Comments at 2; H. Hans Brakob Comments at 1; James P. Miccolis Comments at 1-2.

<sup>143</sup> Amending our rules to authorize General Class operator privileges to Technician and Technician Plus Class licensees who were licensed before 1987 is not necessary, because these licensees do not need to take an examination to upgrade to a General Class operator license. Rather, Technician and Technician Plus Class licensees licensed before 1987 may, under the current rules, receive credit for all examinations necessary to receive a General Class operator license by showing documentation of pre-1987 licensure. See 47 C.F.R. § 97.505(a).

auxiliary station operation,<sup>144</sup> because the Technician Class license authorized privileges primarily above 30 MHz.<sup>145</sup> The General Class written examination, however, tested primarily on HF operations because HF privileges primarily are the additional authorized privileges of the General Class license.<sup>146</sup>

For this reason and contrary to the claim of the ARRL,<sup>147</sup> we believe that differences between the Technician and Technician Plus examinations were far greater than simply the Morse code test and that, due to these differences, Technician and Technician Plus Class licensees licensed after 1987 have not shown that they are qualified for General Class operator privileges. We do not believe that automatically upgrading Technician and Technician Plus Class licensees to General Class operator privileges would be in the public interest, and accordingly, we deny this request.

32. Regarding requests that we automatically upgrade Advanced Class licensees to the Amateur Extra Class, we note that an Advanced Class licensee need answer correctly only thirty-seven questions on a fifty question written examination in order to upgrade to an Amateur Extra Class operator license.<sup>148</sup> We do not believe this is an unreasonable requirement, given the additional privileges afforded, including additional spectrum and exclusive frequency segments authorized for use by Amateur Extra Class licensees. As noted above, tens of thousands of Advanced Class licensees have upgraded to the Amateur Extra Class license since the twenty wpm telegraphy requirement was eliminated.<sup>149</sup> We believe that this amount of upgrading activity confirms the conclusion reached in the *Restructure Report and Order* that the primary deterrent to upgrading the Amateur Extra Class was the formerly required twenty wpm telegraphy examination.<sup>150</sup> As with the Novice and Technician Plus Class operator licenses, we note that as Advanced Class operator licenses either expire and the licensees fail to renew their license, or these licensees upgrade to the Amateur Extra Class operator license, the number of licensees remaining in the Advanced Class will continue to decline until this class is no longer a distinct class of operator license. We do not believe the public interest would be served by automatically upgrading Advanced Class licensees to an Amateur Extra Class license status. Accordingly, we deny the request.

#### **D. Other Requested Rule Changes**

##### **1. Written Examination Content**

33. *Background.* As noted above, each license class requires an applicant to pass one or more written examination elements.<sup>151</sup> Prior to 2000, our rules required that each written examination be composed of a specific number of questions on specific topics.<sup>152</sup> The topics in the pre-2000

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<sup>144</sup> See 47 C.F.R. §§ 97.201, 97.205.

<sup>145</sup> See 47 C.F.R. § 97.301(a).

<sup>146</sup> See 47 C.F.R. § 97.301(d).

<sup>147</sup> See ARRL Petition at 19.

<sup>148</sup> See 47 C.F.R. § 97.503(b).

<sup>149</sup> See para. 25, *supra*.

<sup>150</sup> 47 C.F.R. § 97.501(a) (1999).

<sup>151</sup> See para. 8, *supra*.

<sup>152</sup> 47 C.F.R. § 97.503(c) (1999). These topics are referred to in some petitions as "sub-elements."

examinations were the topics the Commission used prior to 1983 when it prepared and administered amateur radio operator examinations.<sup>153</sup> In the *Restructure Report and Order*, the Commission agreed that the Question Pool Committee (QPC) of the NCVEC should specify topics and organize questions by topic, if this function was necessary, in order to allow material included on amateur radio operator examinations to be revised in a much more timely fashion than could be accomplished by a rulemaking procedural process.<sup>154</sup> Accordingly, since 2000, the Commission has allowed the QPC to specify examination topics.<sup>155</sup> Additionally, the Commission revised Section 97.503 of our Rules to remove the specific topics and algorithms that VEs were required to use in preparing written examinations.<sup>156</sup>

34. *Petitions*. PRARL and FISTS propose that we require that improved technical and operating skills be demonstrated in the written examinations for the Technician and General Class operator licenses.<sup>157</sup> FISTS states that the Amateur Extra Class written examination was once considered the most rigorous of all amateur or commercial operator written examinations, but is no longer.<sup>158</sup> It argues that the Commission's decision to delegate the content of the written examinations to the amateur service community has resulted in simplified, less technical written examinations that threaten to turn the amateur service "into a group of non-technical consumers, rather than a service peopled by skilled radio operators, experimenters and technically oriented volunteers."<sup>159</sup>

35. PRARL and FISTS also request that we again regulate the content of examinations prepared by VECs or VEs.<sup>160</sup> PRARL notes that under the present rules, as compared to the former rules, a VE could prepare an examination that contained thirty-five questions on one topic, and no questions on any other topic.<sup>161</sup> It also argues that the NCVEC was not established to decide the content of examinations.<sup>162</sup>

36. The Speroni Petition proposes that we change the license examination rules to require that licensees demonstrate proficiency in the type(s) of communication they wish to utilize.<sup>163</sup> Specifically,

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<sup>153</sup> *Restructure Report and Order*, 15 FCC Rcd at 339 ¶ 41.

<sup>154</sup> *Id.* at 339 ¶ 42.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> See PRARL Petition at 1-2; FISTS Petition at 8. Specifically, FISTS requests that the Technician Class examination include questions concerning digital communications; the technical level of the General Class written examination be increased to that of the pre-2000 Advanced Class written examination; and the written examination for the Amateur Extra Class operator license require knowledge of circuit design, information theory, digital methods and encoding schemes, software-defined radios, and a more thorough knowledge of propagation and geophysics than is currently required. FISTS Petition at 8.

<sup>158</sup> See FISTS Petition at 9.

<sup>159</sup> *Id.* at 10.

<sup>160</sup> See PRARL Petition at 1-2; FISTS Petition at 9-10; see also Rightsell-Kholer Petition at 8.

<sup>161</sup> See PRARL Petition at 3.

<sup>162</sup> *Id.*

<sup>163</sup> See Speroni Petition at 1.

the petition proposes that the Technician Class written examination be reduced to twenty questions, the General Class written examination be increased to forty questions, and the Amateur Extra Class written examination remain fifty questions, with all questions relating only to voice communications.<sup>164</sup> The petitioner also requests that we require a licensee to pass an additional examination for specific operating activities, or modes of communication.<sup>165</sup> In support of this request, the petition argues that requiring licensees to demonstrate knowledge only of the type(s) of communication they wish to utilize will lower entry barriers, and facilitate the growth of the amateur service.<sup>166</sup>

37. *Discussion.* With respect to the requests that we require that improved technical and operating skills be demonstrated in the written examinations, we believe that the requests are either too vague or request use of the examinations for purposes other than determining whether a licensee can properly operate an amateur station.<sup>167</sup> Requests that written examinations be revised<sup>168</sup> to test "improved technical and operating skills" or increased "technical level" are vague because there is no objective means to measure technical and operating skills. Also, the purpose of the written examinations, under our rules, is not to determine whether a person has achieved a particular level of skill, but rather to determine whether an individual can properly operate an amateur station.<sup>169</sup> The record does not demonstrate that the current question pools or examinations are inadequate for this purpose. For these reasons, we deny these requests. To the extent that petitioners wish to see particular questions included in the pools of questions from which examinations are formed, they should direct their concerns and suggested questions to the QPC of the NCVEC.<sup>170</sup>

38. We also deny the requests that we more closely regulate the content of written examinations. In this regard, we note that determining what questions should be included in the question pools is a function that has been performed by the VECs,<sup>171</sup> thereby allowing those who

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<sup>164</sup> *Id.* at 4.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> See 47 C.F.R. § 97.503(b). The purpose of a written examination is to allow the applicant to demonstrate that he or she possesses the operational and technical qualifications required to properly operate an amateur station.

<sup>168</sup> The question pool database is periodically revised by the NCVEC's QPC in order to reflect the then-current operational and technical knowledge a licensee requires to operate an amateur station. The database is arranged into three sections, each of which contains questions applicable to the privileges of one of the three classes of amateur radio operator licenses we issue.

<sup>169</sup> See 47 C.F.R. § 97.503(a); see also *Restructure Report and Order*, 15 FCC Rcd at 341 ¶ 44 (noting that an extensive technical understanding is not always necessary to properly operate commercially manufactured equipment). We also note that the amateur community self-administers programs such as the A-1 Operator Club; publishes the results of on-the-air operating events such as contests; and offers licensees numerous operating awards, certificates, and plaques to recognize superior operating skills.

<sup>170</sup> For example, questions about digital communications, knowledge of circuit design, information theory, digital methods and encoding schemes, software-defined radios, and a more thorough knowledge of propagation and geophysics, should be submitted to the QPC for inclusion in the applicable question pool.

<sup>171</sup> See Permitting Volunteer-Examiner Coordinators to Maintain Pools of Questions for Amateur Operator Examinations, PR Docket No. 85-196, *Report and Order*, 1 Fed. Reg. 30645 (Aug. 28, 1986), *Memorandum Opinion and Order*, 2 FCC Rcd 2815 (1987).

prepare license examinations to revise examination questions in a much more timely fashion than if the Commission prepared questions for inclusion on the examinations. We also note that in the *Restructure Report and Order*, the Commission eliminated from its rules the requirement that each examination element be composed of specific topics and a specific number of questions on each topic, thereby allowing VEs to prepare more relevant written examinations.<sup>172</sup> The petitions have not shown any changed circumstances meriting reconsideration of these decisions, or that examinations are not being prepared that meaningfully test the knowledge an examinee needs to properly operate an amateur station.

39. Finally, we conclude that it is not necessary to require new examinations for “mode privileges,” as proposed by Speroni. In this regard, we note that under the current rules, the QPC may revise the question pools to include questions about particular operating activities, if such questions are deemed necessary.<sup>173</sup> Additionally, we believe that requiring VEs to prepare additional examination elements and maintain additional question pools for various operating activities would impose an unreasonable and unnecessary burden on VEs and overly complicate the examination system. For these reasons, we deny this request in the Speroni Petition.

## 2. Repeating Failed Examination Elements

40. *Background.* At an examination session, VEs administer examination elements to examinees who desire to obtain an amateur radio operator license or who desire to advance to a higher class of operator license.<sup>174</sup> Section 97.509(h) of the Commission’s Rules requires that, upon completion of each examination element, the administering VEs must immediately grade an examinee’s answers.<sup>175</sup> When an examinee does not qualify for an operator license or a higher class of operator license, the administering VEs must return the application document to the examinee and inform the examinee of the grade on the examination element.<sup>176</sup> The rules do not prohibit VEs from allowing an examinee who has failed an examination element a second attempt to pass that examination element. To the contrary, an examinee that fails an examination element must at some time re-take and pass that examination element to qualify for the desired class of operator license.<sup>177</sup> The rules do not bar re-testing examinees during the same examination session, subject to the limitation in Section 97.509(f) that the same question set may not be re-administered to an examinee.<sup>178</sup> These requirements are intended to promote the flexibility of VEs to accommodate examinees, and do not address many specific situations that may occur in the course of administering license examinations. To our knowledge, the VEs have reasonably accommodated examinees to the extent practicable. For example, we understand that if a different version of the examination is available at the time, and there is enough time left in the same session to allow an examinee to complete the second examination, generally the VEs will allow an examinee a second opportunity to pass the examination. Alternatively, the VEs may

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<sup>172</sup> See *Restructure Report and Order*, 15 FCC Rcd at 339 ¶ 42.

<sup>173</sup> See 47 C.F.R. § 97.507(b).

<sup>174</sup> See 47 C.F.R. §§ 97.17(b); 97.21(a)(2).

<sup>175</sup> See 47 C.F.R. § 97.509(h).

<sup>176</sup> See 47 C.F.R. § 97.509(j).

<sup>177</sup> See 47 C.F.R. § 97.501.

<sup>178</sup> See 47 C.F.R. § 97.509(f).

make arrangements with examinees who have failed an examination for a second examination opportunity.

41. The PRARL Petition proposes that we prohibit re-testing of examinees at the same examination session.<sup>179</sup> The petition argues that a person who fails an examination should be allowed a second opportunity to take the examination, but only after further study and at another examination session.<sup>180</sup> The FISTS Petition also proposes that we not allow an applicant who has failed a written or telegraphy examination to be re-tested by the VEs at the same examination session,<sup>181</sup> arguing that re-testing detracts from the purpose of testing,<sup>182</sup> and that prohibiting re-testing at the same session would substantially reduce the workload of the VEs and result in shorter test sessions.<sup>183</sup>

42. *Discussion.* The issue of whether the Commission should amend its rules to prohibit examinees from repeating failed examinations during the same examination session was considered in the *Restructure Memorandum Opinion and Order*.<sup>184</sup> In that decision, the Commission stated that matters concerning the mechanics of examination administration generally reside with the administering VEs, and that whether to allow an examinee a “second chance” during the same examination session is a decision within the discretion of those VEs.<sup>185</sup> We continue to believe such discretion is appropriate, and we believe that any rules that would regulate the details of examination administration could unintentionally limit the flexibility of the VE system to meet the needs of examinees.<sup>186</sup> In this regard, we note that because examination opportunities in some geographical areas are available only at events that occur infrequently in those areas, such as amateur radio-related conventions or radio club meetings, any rules prohibiting the re-testing of examinees during the same examination session could have the effect of unduly limiting examination opportunities.<sup>187</sup> Because we believe the requested rule amendment is inconsistent with the purpose of the VE system, we deny this request.

### 3. Certifying Volunteer Examiners (VEs)

43. *Background.* In the VEC system, a VE that administers an examination must be accredited by the VEC that coordinates that examination session.<sup>188</sup> Section 97.525(a) requires, among other

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<sup>179</sup> See PRARL Petition at 3.

<sup>180</sup> *Id.*

<sup>181</sup> See FISTS Petition at 9.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> See *Restructure Memorandum Opinion and Order*, 16 FCC Rcd at 8086 ¶¶ 22-23.

<sup>185</sup> *Id.* at 8086 ¶ 23.

<sup>186</sup> See *Use of Volunteers to Prepare and Administer Operator Examinations in the Amateur Radio Service, Report and Order*, PR Docket No. 83-27, 95 FCC 2d 14 (1983), as amended by *Errata*, 48 Fed. Reg. 49244 (1983), 49 Fed. Reg. 1375 (1984), and modified by *Memorandum Opinion and Order*, FCC 84-324, 49 Fed. Reg. 30310 (1984).

<sup>187</sup> See also James B. Wiley KL7CC Comments RM-10809 at 2.

<sup>188</sup> See 47 C.F.R. §§ 97.509(b), 97.525(a). To be certified as a VE, a person must, among other things, be at least eighteen years of age, hold a specified class of amateur operator license, never have had an amateur station license revoked or suspended, and not be a person whose voluntary and uncompensated services the FCC does not accept.

things, that no VEC may accredit as a VE any person whom the VEC determines is not competent to perform the VE functions, or if the VEC otherwise determines that there are sufficient questions raised as to the person's integrity or honesty that could compromise the examinations.<sup>189</sup> The process by which a VEC recruits VEs is not specified by our rules but, rather, is left to the discretion of each VEC. In this regard, we note that some VECs offer an on-line application that potential VEs may use to apply for accreditation,<sup>190</sup> and other VECs use a mail-in form.<sup>191</sup>

44. The PRARL Petition proposes that we require VECs to adequately monitor and audit VEs in their organizations.<sup>192</sup> It notes that some VECs certify VEs after receiving an on-line request to be certified, and it believes that no "real investigation" effort is made to ensure that the applicants meet minimum statutory requirements.<sup>193</sup> The petitioner also requests that we hold a VEC responsible when one of the VE teams it has accredited compromises license examination testing in some way.<sup>194</sup>

45. *Discussion.* We are not persuaded that the PRARL Petition has presented sufficient reason to justify the requested rule amendment. In this regard, it is not clear from the petition what PRARL believes would constitute a "real investigation" into whether applicants meet minimum statutory requirements to be a VE, or that receiving an on-line request to certify a licensee as a VE compromises the system of accrediting VEs. We note that VECs may use a variety of methods and sources of data, such as publicly available information or our licensing data and other Commission records, to determine if a person meets the standards to be accredited as a VE.

46. With regard to the PRARL Petition's proposal that we hold VECs responsible for the actions of VEs that they have certified but who have compromised testing, we note that our rules presently require that when examination irregularities occur, the coordinating VECs must resolve all discrepancies that occurred during the examination session.<sup>195</sup> We also note that as a result of its investigation to resolve discrepancies, a VEC may take any necessary action, including decertification of a VE, if it determines that its accredited VE has compromised testing. If the VEC does not resolve discrepancies or continues to use VEs that compromise testing, we can terminate our VEC agreement with the organization.<sup>196</sup> We find, therefore, that the current rules already hold VECs responsible for VEs whom they have certified and whom compromise testing. For this reason, we believe PRARL's request is unnecessary.

#### IV. CONCLUSION

47. In summary, we believe that the public interest will be served by revising the amateur service rules to eliminate the telegraphy testing requirement. We also believe that these proposed rule

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<sup>189</sup> 47 C.F.R. § 97.525(a).

<sup>190</sup> See, e.g., [https://www.w5yi.org/ssl/ve\\_application.php](https://www.w5yi.org/ssl/ve_application.php).

<sup>191</sup> See, e.g., <http://www.arrl.org/arrlvec/#arrlve>.

<sup>192</sup> See PRARL Petition at 2.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> See 47 C.F.R. § 97.519.

<sup>196</sup> See 47 C.F.R. § 97.521.

changes will allow amateur service licensees to better fulfill the purpose of the amateur service and will enhance the usefulness of the amateur service to the public and licensees. We therefore seek comment on these proposed rule changes. We conclude that some rule changes proposed by some petitioners are unnecessary, or are already being considered in the ongoing *Phone Band Expansion NPRM* proceeding.

## V. PROCEDURAL MATTERS

48. *Initial Regulatory Flexibility Certification.* The Regulatory Flexibility Act<sup>197</sup> requires an initial regulatory flexibility analysis to be prepared for notice and comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>198</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>199</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>200</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>201</sup>

49. In this *NPRM*, we propose to amend the amateur service rules that presently require a person to demonstrate his or her ability to send and receive correctly a Morse code telegraphy message in order to qualify for certain amateur service operator licenses.<sup>202</sup> Because “small entities,” as defined in the RFA, are not persons eligible for licensing in the amateur service, this proposed rule does not apply to “small entities.” Rather, it applies exclusively to individuals who are taking an examination for an amateur radio operator license. Such amendment would be in the public interest because we believe that the present requirement is unnecessary and that eliminating the requirement would make the amateur service more attractive to individuals with a non-pecuniary interest in radio.

50. In addition, the rules proposed in this *NPRM* potentially could affect publishers of amateur radio examination study material. Based on past inquiries and advertisements in communication-related magazines from these publishers, we estimate that there are between five and ten such publishers. The proposed rule changes, if adopted, would apply to individuals rather than publishers and would not result in a mandatory change in products offered by publishers of examination study material. (Because use of Morse code for amateur service communications would still be permitted even if the testing requirement is eliminated, a market would still exist for Morse code training material.) Therefore, we certify that the proposals in this *NPRM*, if adopted, will not have a significant economic impact on a

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<sup>197</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>198</sup> See 5 U.S.C. § 605(b).

<sup>199</sup> See 5 U.S.C. § 601(6).

<sup>200</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>201</sup> See 15 U.S.C. § 632.

<sup>202</sup> See 47 C.F.R. §§ 97.17, 97.501.

substantial number of small entities. The Commission will send a copy of the *NPRM*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.<sup>203</sup> This initial certification will also be published in the Federal Register.<sup>204</sup>

51. *Paperwork Reduction Analysis.* This *NPRM* does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

52. *Ex Parte Rules Presentations.* This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission’s Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

53. *Alternative formats.* To request materials in alternative formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to <[FCC504@fcc.gov](mailto:FCC504@fcc.gov)> or call the Consumer and Government Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This *NPRM* also may be downloaded from the Commission’s web site at <<http://www.fcc.gov/>>.

54. *Comment Dates.* Pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **[60 days after publication in the Federal Register]** and reply comments on or before **[75 days after publication in the Federal Register]**.

55. Commenters may file comments electronically using the Commission’s Electronic Comment Filing System (ECFS), the Federal Government’s eRulemaking Portal, or by filing paper copies.<sup>205</sup> Commenters filing through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. If multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Commenters may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, “get form.” Commenters will receive a sample form and directions in reply. Commenters filing through the Federal eRulemaking Portal <<http://www.regulations.gov/>>, should follow the instructions provided on the website for submitting comments.

56. Commenters who chose to file paper comments must file an original and four copies of each comment. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room TW-A325, Washington, D.C. 20554.

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<sup>203</sup> *See* 5 U.S.C. § 605(b).

<sup>204</sup> *See id.*

<sup>205</sup> *See* Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order*, 13 FCC Rcd 11322 (1998).

57. Commenters may send filings by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. Commenters must bind all hand deliveries together with rubber bands or fasteners and must dispose of any envelopes before entering the building. This facility is the only location where the Commission's Secretary will accept hand-delivered or messenger-delivered paper filings. Commenters must send commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) to 9300 East Hampton Drive, Capitol Heights, MD 20743. Commenters should address U.S. Postal Service first-class mail, Express Mail, and Priority Mail to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

58. Interested parties may view documents filed in this proceeding on the Commission's Electronic Comment Filing System (ECFS) using the following steps: (1) access ECFS at <http://www.fcc.gov/cgb/ecfs>. (2) In the introductory screen, click on "Search for Filed Comments." (3) In the "Proceeding" box, enter the numerals in the docket number. (4) Click on the box marked "Retrieve Document List". A link to each document is provided in the document list. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, DC, 20554. Filings and comments also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail [www.bcpiweb.com](http://www.bcpiweb.com).

59. For further information, contact William T. Cross, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418-0680 or TTY (202) 418-7233.

## VI. ORDERING CLAUSES

60. IT IS ORDERED that, pursuant to Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), NOTICE IS HEREBY GIVEN of the proposed amendment to Part 97 of the Commission's Rules, 47 C.F.R. Part 97, as described above, and that COMMENT IS SOUGHT on these proposals.

61. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10781, submitted by Peter M. Beauregard on July 15, 2003, IS DENIED.

62. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10782, submitted by P.V. Coppola *et. al.* on July 18, 2003, IS GRANTED to the extent indicated herein.

63. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10783, submitted by Kiernan K. Holliday on July 21, 2003, IS GRANTED to the extent indicated herein.

64. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10784, submitted by Dale E. Reich on July 28, 2003, IS GRANTED to the extent indicated herein.

65. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10785, submitted by Eric R. Ward on July 30, 2003, IS GRANTED to the extent indicated herein.

66. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10786, submitted by No Code International on August 13, 2003, IS GRANTED to the extent indicated herein.

67. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10787, submitted by the National Conference of Volunteer Examiner Coordinators on August 1, 2003, IS GRANTED to the extent indicated herein.

68. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rule Making, RM-10805, submitted by Charles L. Young, Jr., on September 5, 2003, IS DENIED.

69. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition, RM-10806, submitted by Frank W. Napurano on August 14, 2003, IS DENIED.

70. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rule Making, RM-10807, submitted by Robert G. Rightsell and Harry A.M. Kholer on September 5, 2003, IS DENIED.

71. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rule Making, RM-10808, submitted by Joe Speroni on September 8, 2003, IS DENIED.

72. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10809, submitted by the Puerto Rico Amateur Radio League on September 11, 2003, IS GRANTED to the extent indicated herein.

73. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rule Making, RM-10810, submitted by James Roux on September 11, 2003, IS GRANTED to the extent indicated herein.

74. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10811, submitted by the FISTS CW Club on September 2, 2003, IS DENIED.

75. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10867, submitted by the American Radio Relay League, Inc., on March 18, 2004, IS GRANTED to the extent indicated herein.

76. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rule Making, RM-10868, submitted by the Radio Amateur Foundation on February 20, 2004, IS DENIED.

77. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10869, submitted by Ronald D. Lowrance on September 8, 2003, IS DENIED.

78. IT IS FURTHER ORDERED that, pursuant to Section 1.407 of the Commission's Rules, 47 C.F.R § 1.407, the Petition for Rulemaking, RM-10870, submitted by the National Conference of Volunteer Examiner Coordinators on March 4, 2004, IS GRANTED to the extent indicated herein.

79. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs

Bureau, Reference Information Center, SHALL SEND a copy of this NOTICE OF PROPOSED RULE MAKING AND ORDER, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**  
**PROPOSED RULES**

Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 97 - Amateur Radio Service

The authority citation for part 97 continues to read as follows:

**AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.**

1. Section 97.501 is amended by revising paragraph (a) and (b) to read as follows:

**§ 97.501 Qualifying for an amateur operator license.**

\* \* \* \* \*

(a) Amateur Extra Class operator: Elements 2, 3, and 4;

(b) General Class operator: Elements 2 and 3;

\* \* \* \* \*

2. Section 97.503 is amended to remove paragraph (a), redesignate paragraph (b) as an undesignated introductory paragraph, and redesignate paragraphs (b)(1)-(3) as paragraphs (a)-(c), respectively.

3. Section 97.505 is amended by removing paragraphs (a)(5) and (a)(7)-(9), redesignating paragraph (a)(6) as (a)(5), and revising paragraphs (a)(1)-(4) to read as follows:

**§ 97.505 Element credit.**

(a) \* \* \* \* \*

(1) An unexpired (or expired but within the grace period for renewal) FCC-granted Advanced Class operator license grant: Elements 2 and 3.

(2) An unexpired (or expired but within the grace period for renewal) FCC-granted General Class operator license grant: Elements 2 and 3.

(3) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician or Technician Plus Class operator (including a Technician Class operator license granted before February 14, 1991) license grant: Element 2.

(4) An expired FCC-issued Technician Class operator license document granted before March 21, 1987: Element 3.

\* \* \* \* \*

4. Section 97.507 is amended by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

**§ 97.507 Preparing an examination.**

(a) Each written question set administered to an examinee must be prepared by a VE holding an Amateur Extra Class operator license. A written question set may also be prepared for the following elements by a VE holding an operator license of the class indicated:

(1) Element 3: Advanced Class operator.

(2) Element 2: Advanced, General, or Technician Plus Class operators.

(b) \*\*\*\*\*

(c) Each written question set administered to an examinee for an amateur operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

5. Section 97.509 is amended by removing paragraph (g), redesignating paragraphs (h)-(m) as paragraphs (g)-(l) respectively, and revising paragraph (f) to read as follows:

**§ 97.509 Administering VE requirements.**

\* \* \* \* \*

(f) No examination that has been compromised shall be administered to any examinee. The same question set may not be re-administered to the same examinee.

\* \* \* \* \*