

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
BFT Training Unlimited, Inc.	)	File No. EB-05-SE-246
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 23, 2006**

**Released: February 27, 2006**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order, we admonish BFT Training Unlimited, Inc. (“BFT”), an FCC-certified Commercial Operator License Examination Manager (“COLEM” or “COLE Manager”), for conducting commercial operator telegraphy examinations over the telephone in violation of Part 13 of the Commission’s Rules (“Rules”)<sup>1</sup> and its Memorandum of Agreement (“MOA”)<sup>2</sup> with the Commission.

**II. BACKGROUND**

2. In April 1999, the Commission entered into an MOA with BFT which authorized BFT to administer commercial operator license examinations. In August 2005, the Commission staff received a complaint alleging that BFT may have facilitated cheating and otherwise undermined the integrity of commercial operator license examinations it has been entrusted to administer pursuant to its MOA. The complaint alleged, in part, that BFT administered telegraphy examinations by telephone. On September 1, 2005, the Enforcement Bureau issued a Letter of Inquiry (“LOI”)<sup>3</sup> to BFT.

3. In its September 21, 2005 response, BFT admitted that it has “under certain controlled circumstances,” administered telegraphy examinations over the telephone to examinees.<sup>4</sup> BFT stated that Telegraphy Elements 1 and 2<sup>5</sup> were administered over the phone for those students who had traveled

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<sup>1</sup> 47 C.F.R. Part 13.

<sup>2</sup> See Memorandum Of Agreement between The United States Government, The Federal Communications Commission and BFT Training Unlimited, Inc., executed by J. David Byrd, CEO, BFT Training Unlimited, Inc. on April 5, 1999 and D’wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, on April 8, 1999.

<sup>3</sup> See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to J. David Byrd, CEO, BFT Training Unlimited, Inc. (September 1, 2005).

<sup>4</sup> See Letter from J. David Byrd, CEO, BFT Training Unlimited, Inc. to the Federal Communications Commission, Spectrum Enforcement Division, Enforcement Bureau (September 21, 2005) (“BFT Response”). BFT indicated that it had administered telegraphy examinations by telephone to ten examinees. BFT Response at 3.

<sup>5</sup> Telegraphy Element 1 consists of sending and receiving correctly texts in the international Morse code at not less than 16 code groups per minute. Telegraphy Element 2 consists of sending and receiving correctly texts in the international Morse code at not less than 20 words per minute. 47 C.F.R. § 13.203(b)(1) and (2).

significant distances to attend commercial operator classes and had passed a written examination, so that they would not incur an additional expense of returning to the test location for the telegraphy examination.<sup>6</sup> BFT claimed that it has no knowledge of a particular rule prohibiting this practice.<sup>7</sup> BFT further stated that prior to administering an examination, each examinee was identified by voice recognition and telephone number recognition through Caller ID and then asked to affirm over the telephone: “I am taking these tests on my own, and without assistance of any kind or from anyone.”<sup>8</sup>

### III. DISCUSSION

4. Section 13.203(b) of the Rules provides that “a telegraphy examination must prove that the examinee has the ability to send correctly by hand and to receive correctly by ear texts in the international Morse Code at not less than the prescribed speed . . . .”<sup>9</sup> Section 13.209(a) of the Rules provides that “each examination for a commercial radio operator license must be administered at a location and a time specified by the COLEM. The COLEM is responsible for the proper conduct and supervision of each examination.”<sup>10</sup> Section 13.211(d) provides that “the COLEM may prohibit from the examination area items the COLEM determines could compromise the integrity of an examination or distract examinees.”<sup>11</sup> Section 13.213 provides that “no entity may serve as a COLEM unless it has entered into a written agreement with the FCC. In order to be eligible to be a COLEM, the entity must: (a) Agree to abide by the terms of the agreement . . . .”<sup>12</sup>

5. The MOA states that “having submitted a request for certification as a COLEM that includes . . . the procedures it will use for administering examinations . . . BFT hereby agrees that it will abide by the terms of its request.”<sup>13</sup> The MOA also states that “any changes to the terms specified in BFT’s request for certification must be agreed to in writing by both parties.”<sup>14</sup> Additionally, the MOA requires BFT to “comply . . . with instructions issued by the FCC.”<sup>15</sup> The MOA further states that “BFT certifies that it will comply with the applicable provisions of Part 13 . . . and with the following terms concerning the administration of examinations. BFT must verify the identity of each examinee . . . .”<sup>16</sup>

6. In addition, at the time the MOA was executed, the Commission provided BFT written COLE Manager Standards which provide detailed instructions for the administration of commercial operator license examinations.<sup>17</sup> The COLE Manager Standards issued by the Commission require the

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<sup>6</sup> BFT Response at 2.

<sup>7</sup> BFT Response at 1.

<sup>8</sup> BFT Response at 2 .

<sup>9</sup> 47 C.F.R. § 13.203(b).

<sup>10</sup> 47 C.F.R. § 13.209(a).

<sup>11</sup> 47 C.F.R. § 13.211(d).

<sup>12</sup> 47 C.F.R. § 13.213(a).

<sup>13</sup> MOA at paragraph 1.

<sup>14</sup> MOA at paragraph 2.

<sup>15</sup> MOA at paragraph 3.

<sup>16</sup> MOA at paragraph 3.

<sup>17</sup> Commercial Operator License Examination Manager Standards, Revision 4, effective December 31, 2002 (“COLE Manager Standards”). In May 2005, the Commission sent BFT revised COLE Manager Standards, Commercial Operator License Examination Manager Standards, Revision 5, effective June 1, 2005. The COLE

COLE Manager to administer each examination in a responsible and professional manner.<sup>18</sup> Specifically, the COLE Manager Standards provide that “each examination must be administered fairly and in such a manner as to ensure the integrity of the examination process.”<sup>19</sup> Before administering the examination, the COLE Manager is required to make positive identification of the examinee.<sup>20</sup> The COLE Manager Standards list the types of documents that may be used to establish identity.<sup>21</sup> The COLE Manager is also required to prevent cheating during the examination.<sup>22</sup> Cheating includes, but is not limited to, “using or attempting to use unauthorized examination aids, obtaining answers from other examinees (with or without their knowledge), or taking an examination for another person.”<sup>23</sup> Finally, the COLE Manager is explicitly required to “prohibit any examinee from bringing into the examination room or using during the examination any programmable or printing calculators, books or other reference material, radios, or cameras.”<sup>24</sup>

7. Neither the Part 13 Rules, nor the MOA and COLE Manager Standards explicitly address the administration of telegraphy examinations over the telephone. Nevertheless, we find that this practice is patently inconsistent with the general provisions of Part 13, the MOA and COLE Manager Standards making the COLEM responsible for ensuring the integrity of the examination process<sup>25</sup> and violates several specific requirements of Part 13, the MOA and COLE Manager Standards as well. Specifically, BFT is required to abide by the procedures for administering examinations specified in its request for certification.<sup>26</sup> BFT’s request for certification did not state that it intended to administer telegraphy examinations over the telephone. In addition, BFT is required to make positive identification of each examinee before administering the examination by using documents such as those listed in the COLE Manager Standards.<sup>27</sup> BFT’s use of voice recognition and telephone number recognition to identify an examinee does not comply with this requirement and in any event is clearly inadequate to establish positive identification of the examinee since BFT has no way of knowing who is actually completing the examination over the telephone. Moreover, BFT is required to take steps to prevent cheating and the use of unauthorized aids during examinations.<sup>28</sup> Again, BFT has no way of knowing who is actually completing an examination or whether the examinee is using any unauthorized aids when administering an examination over the telephone.<sup>29</sup>

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Manager Standards cited herein are the Revision 4 Standards, which were in effect at the time that BFT administered the telegraphy examinations over the telephone.

<sup>18</sup> COLE Manager Standards at paragraph 5.

<sup>19</sup> COLE Manager Standards at paragraph 5A.

<sup>20</sup> COLE Manager Standards at paragraph 5D.

<sup>21</sup> COLE Manager Standards at paragraph 5D(2) and 5D(3).

<sup>22</sup> COLE Manager Standards at paragraph 5J.

<sup>23</sup> *Id.*

<sup>24</sup> COLE Manager Standards at paragraph 5K.

<sup>25</sup> See 47 C.F.R. § 13.209(a) and COLE Manager Standards at paragraph 5A.

<sup>26</sup> See 47 C.F.R. § 13.213(a) and MOA at paragraph 1.

<sup>27</sup> See COLE Manager Standards at paragraph 5D.

<sup>28</sup> See 47 C.F.R. §§ 13.209(a) and 13.211(d) and COLE Manager Standards at paragraphs 5J and 5K.

<sup>29</sup> We note that numerous Internet web sites translate Morse code to text and vice versa. Portable devices that translate Morse code also are available.

8. Accordingly, we conclude that BFT violated Sections 13.209(a), 13.211(d) and 13.213 of the Rules and the terms of the MOA by conducting telegraphy examinations over the telephone. We admonish BFT for these violations. In addition, we caution BFT that future violations of Part 13 or the MOA may result in further sanctions, including monetary forfeiture or its decertification as a COLEM.

9. Finally, we note that we are requiring each of the examinees to whom BFT administered the telegraphy examination over the telephone to retake the test with another COLEM.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that BFT Training Unlimited, Inc. **IS ADMONISHED** for conducting commercial operator telegraphy examinations over the telephone in violation of Part 13 of the Commission's Rules and its Memorandum of Agreement with the Commission.

11. **IT IS FURTHER ORDERED** that copies of this *Memorandum Opinion and Order* shall be sent by Certified Mail, Return Receipt Requested, to the attention of Mr. J. David Byrd, CEO, BFT Training Unlimited, Inc., 1318 Redwood Way, Suite 220, Petaluma, California 94954.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey  
Chief, Spectrum Enforcement Division  
Enforcement Bureau