

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

In the Matter of )  
 )  
Amendment of Part 97 of the Commission's Rules )  
to Implement Certain World Radio )  
Conference 2003 Final Acts )

**ORDER**

**Adopted: January 17, 2006**

**Released: January 19, 2006**

By the Acting Chief, Wireless Telecommunications Bureau:

1. In this *Order*, the Wireless Telecommunications Bureau, on its own motion, adopts certain amendments to the Amateur Radio Service rules,<sup>1</sup> in accordance with the authority delegated by the Commission pursuant to Section 0.331(d) of the Commission's Rules.<sup>2</sup> These amendments will ensure that the Commission's Amateur Radio Service rules conform to Article 25 of the international Radio Regulations (Radio Regulations), adopted at the 2003 World Radiocommunication Conference (WRC-03),<sup>3</sup> and will further the Commission's ongoing efforts to streamline its Amateur Service Rules.<sup>4</sup> The overall effect of this action is to update the Part 97 Amateur Radio Service rules in the Code of Federal Regulations to conform to now-effective international agreements. We adopt these conforming amendments to the Part 97 Amateur Radio Service rules without notice and comment, which is not required in this case under the Administrative Procedure Act (APA).<sup>5</sup>

<sup>1</sup> 47 C.F.R. Part 97. The amateur radio services are the amateur service, the amateur-satellite service, and the radio amateur civil emergency service. *See* 47 C.F.R. § 97.3(a)(2).

<sup>2</sup> 47 C.F.R. § 0.331(d). Section 0.331(d) provides:

The Chief, Wireless Telecommunications Bureau shall not have the authority to act upon notices of proposed rulemaking and inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing *except* such orders involving *ministerial conforming amendments to rule parts, or orders conforming any of the applicable rules to formally adopted international conventions or agreements where novel questions of fact, law, or policy are not involved* (emphasis added).

<sup>3</sup> *See* International Telecommunications Union (ITU) *World Radiocommunication Conference Final Acts (Geneva, 2003) (WRC-03 Final Acts)*, Article 25, to which the United States was a signatory. 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* Amendment of Part 97 of the Commission's Rules Governing Amateur Radio Services, WT Docket No. 04-140, *Notice of Proposed Rulemaking and Order*, 19 FCC Rcd 7293 (2004) (proposing to revise operating privileges for Amateur Radio Service licensees as well as to eliminate obsolete and duplicative rules in the Amateur Radio Service) (*Amateur NPRM*).

<sup>5</sup> *See* 5 U.S.C. § 553(a)(1) (notice and comment rulemaking procedures do not apply "to the extent that there is involved—a . . . foreign affairs function of the United States"); *Int'l Brotherhood of Teamsters v. Pena*, 17 F.3d 1478, 1486 (D.C. Cir. 1994) (explicitly rejecting argument that APA's notice and comment requirements applied to rules that Department of Transportation (DOT) adopted pursuant to the North American Free Trade Agreement, and stating that foreign function exception of APA's Section 553(a)(1) applied because "[t]he rule at issue . . . did no more than implement an agreement between the United States and Mexico . . . [and] the United States would have

(continued...)

2. As a general matter, we observe that international arrangements have been made that permit amateur stations regulated by the Commission to communicate with amateur stations located in other countries. Those arrangements have been implemented in Sections 97.111, 97.113, 97.115, and 97.117 of the Commission's Rules.<sup>6</sup> Amending these rules is consistent with the action taken by the Commission in WT Docket No. 01-140,<sup>7</sup> in which it amended Section 97.307(d)<sup>8</sup> to have this rule conform to the Radio Regulations adopted at WRC-00<sup>9</sup> and it amended other amateur service rules to reflect changes in Commission organization and practice.<sup>10</sup>

3. *Section 97.111:* We revise Section 97.111(a)(1) of the Commission's Rules to conform to the current language of Radio Regulations Article 25.1.<sup>11</sup> Previously, Article 25.1 stated "Radiocommunications between amateur stations of different countries shall be forbidden if the administration of one of the countries concerned has notified that it objects to such radiocommunications."<sup>12</sup> Article 25.1, as revised at WRC-03, now states "Radiocommunications between amateur stations of different countries shall be permitted unless the administration of one of the countries concerned has notified that it objects to such radiocommunications."<sup>13</sup> Section 97.111(a)(1) of the Commission's Rules currently authorizes amateur stations to make "[t]ransmissions necessary to exchange messages with other stations in the amateur service, except those in any country whose administration has given notice that it objects to such communications." In order to conform Section 97.111(a)(1) to the amended Radio Regulation, we hereby amend the rule to state that amateur stations are authorized to make transmissions necessary to exchange messages with other stations in the amateur service, except those in any country whose administration has notified the ITU that it objects to such communications. In this regard, we note that this change does not prejudice the Commission's consideration of comments to its proposed rule changes to Section 97.111(a)(2)<sup>14</sup> in the ongoing WT Docket 04-140 proceeding.<sup>15</sup> In that proceeding, the Commission has proposed to amend Section 97.111(a)(2) to clarify that amateur stations may at all times and on all authorized channels transmit communications necessary to meet essential needs and to facilitate relief actions.<sup>16</sup>

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been renegeing on international obligations if DOT had not issued the rule"); *WBEN, Inc. v. United States*, 396 F.2d 601, 616 (2d Cir. 1968) (applying Section 553 "foreign affairs" exception to FCC rule implementing agreement between the U.S. and Canada that imposed power limits on pre-sunrise broadcasts).

<sup>6</sup> See 47 C.F.R. §§ 97.111, 97.113, 97.115, 97.117. See also Amateur Service International Radiocommunication, *Public Notice*, 4 FCC Rcd 6660 (PRB 1989); Amateur Service Arrangements, *Public Notice*, 13 FCC Rcd 17930 (WTB 1998).

<sup>7</sup> See *Amateur NPRM*, 19 FCC Rcd at 7335 ¶ 98.

<sup>8</sup> 47 C.F.R. § 97.307(d).

<sup>9</sup> See Final Acts of the World Radiocommunication Conference (WRC-97), Geneva, 1997, and Final Acts of the World Radiocommunication Conference (WRC-2000), Istanbul, 2000 (*2000 Radio Regulations*).

<sup>10</sup> See *Amateur NPRM*, 19 FCC Rcd at 7334 ¶ 96.

<sup>11</sup> See *WRC-03 Final Acts*, Article 25.1.

<sup>12</sup> See *2000 Radio Regulations*, Article 25.1.

<sup>13</sup> Given the international context of both the communications referred to and the Radio Regulations, notification is to be provided to the ITU.

<sup>14</sup> See 47 C.F.R. § 97.111(a)(2). This rule concerns emergency communications exchanged between an Amateur Radio Service station and stations in other Commission-regulated services.

<sup>15</sup> See *Amateur NPRM*, 19 FCC Rcd at 7331 ¶ 87.

<sup>16</sup> Currently, our Rules limit amateur station transmissions in support of relief actions to disasters in circumstances where normal communication systems are overloaded, damaged or disrupted. See 47 C.F.R. § 97.401.

4. *Section 97.115:* We revise Section 97.115(a)(2) of the Commission's Rules<sup>17</sup> to conform to the current language of Radio Regulations Article 25.3.<sup>18</sup> Previously, Article 25.3 stated "It is absolutely forbidden for amateur stations to be used for transmitting international communications on behalf of third parties."<sup>19</sup> On a related note, Article 25.4 stated "The proceeding provision [Article 25.3] may be modified by special arrangements between the administrations of the countries concerned."<sup>20</sup> Article 25.3, as revised at WRC-03, now states "Amateur stations may be used for transmitting international communications on behalf of third parties only in case of emergencies or disaster relief. An administration may determine the applicability of this provision to amateur stations under its jurisdiction."<sup>21</sup> Section 97.115(a) of the Commission's Rules states "An amateur station may transmit messages for a third party to: . . . (2) Any station within the jurisdiction of any foreign government whose administration has made arrangements with the United States to allow amateur stations to be used for transmitting international communications on behalf of third parties. No station shall transmit messages for a third party to any station within the jurisdiction of any foreign government whose administration has not made such an arrangement. This prohibition does not apply to a message for any third party who is eligible to be a control operator of the station." In order to conform Section 97.115(a)(2) to the amended Radio Regulation, we amend Section 97.115(a)(2) to allow amateur stations to transmit international third party communications to any station within the jurisdiction of any foreign government when transmitting emergency or disaster relief communications and to any station within the jurisdiction of any foreign government whose administration has made arrangements with the United States to allow amateur stations to be used for transmitting international communications on behalf of third parties.<sup>22</sup>

5. *Section 97.113:* We revise Section 97.113(a)(4) of the Commission's Rules<sup>23</sup> to conform to the current language of Radio Regulations Article 25.2A.<sup>24</sup> Previously, Article 25.2 stated "When transmissions between amateur stations of different countries are permitted, they shall be made in plain language and shall be limited to messages of a technical nature relating to tests and to remarks of a personal character for which, by reason of their unimportance, recourse to the public telecommunications service is not justified."<sup>25</sup> Article 25.2A, as adopted at WRC-03, now states "Transmissions between amateur stations of different countries shall not be encoded for the purpose of obscuring their meaning, except for control signals exchanged between earth command stations and space stations in the amateur satellite service."<sup>26</sup> Section 97.113(a) of the Commission's Rules currently states "No amateur station shall transmit: . . . (4) . . . messages in codes or ciphers intended to obscure the meaning thereof, except as otherwise provide herein; . . ." In order to conform Section 97.113(a)(4) to the amended Radio Regulations, we amend this rule to prohibit amateur stations exchanging messages with amateur stations in other countries from making transmissions that are encoded for the purpose of obscuring their meaning, except for control signals exchanged between earth command stations and space stations in the amateur-

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<sup>17</sup> 47 C.F.R. § 97.115(a)(2).

<sup>18</sup> See *WRC-03 Final Acts*, Article 25.3.

<sup>19</sup> See *2000 Radio Regulations*, Article 25.3.

<sup>20</sup> See *2000 Radio Regulations*, Article 25.4.

<sup>21</sup> See *WRC-03 Final Acts*, Article 25.3.

<sup>22</sup> The conforming amendment that we adopt here does not implicate the Commission's proposal in WT Docket 04-140 to revise Sections 97.115(b)(2) and (c) of the Rules to expand to the existing list of individuals not eligible to be third-parties. See *Amateur NPRM*, 19 FCC Rcd at 7329 ¶ 84.

<sup>23</sup> 47 C.F.R. § 97.113(a)(4).

<sup>24</sup> See *WRC-03 Final Acts*, Article 25.2A.

<sup>25</sup> See *2000 Radio Regulations*, Article 25.2.

<sup>26</sup> See *WRC-03 Final Acts*, Article 25.2A.

satellite service. With regard to the exception in the Radio Regulations for encoded control signals exchanged between earth command stations and space stations in the amateur-satellite service, we note that this exception is already set forth in the Commission's Rules.<sup>27</sup>

6. *Section 97.117:* We revise Section 97.117 of the Commission's Rules<sup>28</sup> to reflect the current language of Article 25.2 of the Radio Regulations.<sup>29</sup> Article 25.2, as revised at WRC-03, now states "Transmissions between amateur stations of different countries shall be limited to communications incidental to the purposes of the amateur service, as defined in No. 1.56 [which defines the amateur service] and to remarks of a personal character."<sup>30</sup> Section 97.117 of the Commission's Rules currently states "Transmissions to a different country, where permitted, shall be made in plain language and shall be limited to messages of a technical nature relating to tests, and, to remarks of a personal character for which, by reason of their unimportance, recourse to the public telecommunications service is not justified." In order to conform Section 97.117 to the amended Article 25.2 of the Radio Regulations, we amend Section 97.117 to state that amateur stations may transmit communications incidental to the purposes of the amateur service and to remarks of a personal character.

7. *Sections 97.3 and 97.309:* We revise the definition of "International Morse code"<sup>31</sup> and various digital codes in the Amateur Radio Service rules<sup>32</sup> because these definitions have been updated in the current Radio Regulations. Specifically, we note that previous Radio Regulation references to International Telegraph and Telephone Consultative Committee Recommendations have been superseded by references to other recommendations. Accordingly, we revise Sections 97.3(a)(27) and 97.309(a) to conform to the current Radio Regulations definitions.<sup>33</sup>

8. Accordingly, IT IS ORDERED that Part 97 of the Commission's Rules is AMENDED in accordance with the foregoing *Order* and as set forth in Appendix A, effective upon publication in the Federal Register. This action is taken pursuant to the authority delegated under 47 C.F.R. §§ 0.131(a) and 0.331(d).

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel  
Acting Chief, Wireless Telecommunications Bureau

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<sup>27</sup> Specifically, this exception is codified in Section 97.211(b), 47 C.F.R. § 97.211(b), which provides that an Amateur Radio Station that is controlling an amateur service space station may transmit special codes intended to obscure the meaning of telecommand messages transmitted to the space station.

<sup>28</sup> 47 C.F.R. § 97.117.

<sup>29</sup> See *WRC-03 Final Acts*, Article 25.2.

<sup>30</sup> *Id.*

<sup>31</sup> See 47 C.F.R. § 97.3(a)(27); see also Leonard H. Anderson Comments, WT Docket No. 04-140, at 1.

<sup>32</sup> See 47 C.F.R. § 97.309(a).

<sup>33</sup> 47 C.F.R. §§ 97.3(a)(27), 97.309(a).

**APPENDIX A**  
**FINAL RULES**

**PART 97 – AMATEUR RADIO SERVICE**

1. 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.

2. Section 97.3(a)(27) is amended to read as follow:

**§ 97.3 Definitions.**

(a) \*\*\*

(27) International Morse code. A dot-dash code as defined in ITU-T Recommendation F.1 (March, 1998), Division B, I. Morse code.

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3. Section 97.111(a)(1) is amended to read as follows:

**§ 97.111 Authorized transmissions.**

(a) \*\*\*

(1) Transmissions necessary to exchange messages with other stations in the amateur service, except those in any country whose administration has notified the ITU that it objects to such communications. The FCC will issue public notices of current arrangements for international communications;

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4. Section 97.113(a)(4) is amended to read as follows:

**§ 97.113 Prohibited transmissions.**

(a) \*\*\*

(4) Music using a phone emission except as specifically provided elsewhere in this section; communications intended to facilitate a criminal act; messages encoded for the purpose of obscuring their meaning, except as otherwise provided herein; obscene or indecent words or language; or false or deceptive messages, signals or identification;

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5. Section 97.115(a)(2) is amended to read as follows:

**§ 97.115 Third party communications.**

(a) \*\*\*

(2) Any station within the jurisdiction of any foreign government when transmitting emergency or disaster relief communications and any station within the jurisdiction of any foreign government whose administration has made arrangements with the United States to allow amateur stations to be used for transmitting international communications on behalf of third parties. No station shall transmit messages other than emergency or disaster relief communications for a third party to any station within the jurisdiction of any foreign government whose administration has not made such an arrangement. This prohibition does not apply to a message for any third party who is eligible to be a control operator of the station.

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6. Section 97.117 is amended to read as follows:

**§ 97.117 International communications.**

Transmissions to a different country, where permitted, shall be limited to communications incidental to the purposes of the amateur service and to remarks of a personal character.

7. Section 97.309(a)(1)-(3) is amended to read as follows:

**§ 97.309 RTTY and data emission codes.**

(a) \*\*\*

(1) The 5-unit, start-stop, International Telegraph Alphabet No. 2, code defined in ITU-T Recommendation F.1, Division C (commonly known as "Baudot").

(2) The 7-unit code specified in ITU-R Recommendations M.476-5 and M.625-3 (commonly known as "AMTOR").

(3) The 7-unit, International Alphabet No. 5, code defined in ITU-T Recommendation T.50 (commonly known as "ASCII").

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