

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

**In the Matter of** )  
 )  
**Request for Waiver to Allow Examination** ) **WT Docket 11-130**  
**Credit for Expired Amateur Radio Operator** )  
**Licenses** )

**To: The Commission**

**COMMENTS OF ARRL, THE NATIONAL ASSOCIATION  
FOR AMATEUR RADIO ON REQUEST FOR WAIVER**

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL), by counsel and pursuant to the *Public Notice*, DA 11-1318, released July 29, 2011 (the Public Notice), hereby respectfully submits its comments in response to the “Waiver Request” filed on or about July 29, 2011 by the Anchorage VEC, one of the Volunteer Examiner Coordinators (VECs) in the Amateur Radio Service. The Anchorage VEC asks that, pending Commission action on Anchorage VEC’s April 27, 2011 Petition for Rule Making (RM-11629), the Commission grant a blanket waiver of Section 97.505 of the Commission’s Rules, to permit individuals whose Amateur Radio licenses have expired and are beyond the two-year grace period for renewal to be afforded credit for examination elements previously passed. RM-11629 (presently pending) requests modification of the Commission’s rules to provide the same relief. In the interest of the Amateur Radio Service in the effective and equitable administration of the Amateur Radio examination program, ARRL states as follows:

## I. Introduction and Background

1. ARRL opposes the grant of the instant Waiver Request because the Anchorage VEC has failed to justify the need for the interim relief sought therein. That opposition, however, does not extend to the underlying petition, RM-11629. *ARRL takes no position at this time with respect to the merits of RM-11629.* As is discussed more thoroughly below, the Commission did in 1995 propose the same relief proposed in the Anchorage VEC Petition. At the time, the issue was notably controversial, and the Commission declined to provide examination element credit to expired licensees beyond the two-year grace period. While ARRL does not suggest that the 1997 Commission action precludes a re-evaluation of the subject now, that action, and the strong opposition to it at the time, does strongly militate against implementing a temporary waiver to adopt the same relief now. This is especially true with respect to examination element credit, because the adoption of the waiver as proposed would effectively prejudge a favorable outcome for the Anchorage VEC petition. Given this, ARRL urges that the Commission carefully evaluate RM-11629, and issue a Notice of Proposed Rule Making or Notice of Inquiry on the subject if it feels that the issue is meritorious. In the meantime, however, the rules should not be waived, temporarily or otherwise, to implement the examination element credit proposal. There has been no need demonstrated to justify the waiver, and such action would assume the outcome of what was earlier (and may well still be) a controversial issue. It is urged that the Commission give a full and fair evaluation of the underlying Petition, but that the Waiver Request be denied.

2. The background of Commission consideration of examination element credit for expired licensees is illustrative of the fact that the issue is not sufficiently settled to

justify the grant of the temporary waiver now. On January 6, 1994, ARRL filed a Petition for Rule Making, RM-8418, seeking amendment of several of the Commission's rules to extend the term of the operator license portion of the Amateur Service license to the lifetime of the licensee. The purpose and benefit of the proposed extension of the operator portion of the license was to permit persons who have held an Amateur Radio operator license, but who left the Service or became inactive for a period of time due to professional or family commitments, to return to the Service without the necessity of relicensing. Though the station license would have expired, and the call sign assigned to that station license would have been relinquished, the person who wished once again to return to the Amateur Service at the license class she or he previously possessed could do so without the necessity of re-examination when their personal circumstances permitted.

3. In response to RM-8418 and other unrelated petitions, the Commission released a *Notice of Proposed Rule Making*, 10 FCC Rcd. 5014 (1995) in Docket 95-57, which proposed somewhat different relief than ARRL had requested. Under the Commission's 1995 proposal, the operator license would expire, but an applicant for an Amateur license would be given credit for the fewest examination elements necessary for the license class held, thus to permit the former licensee to re-obtain an operator and station license. There would be no examination necessary, and examination credit would be afforded to the applicant by the VECs. ARRL argued at the time that the process proposed by the Commission was in effect a license renewal or reinstatement, and not an upgrade by examination. Therefore, it was beyond the authority of the VECs, according to the enabling legislation for the VEC program. 47 U.S.C. § 154(f) (4). The Communications Act, which permits examinations to be prepared and administered by

Volunteer Examiners, is not so broad as to permit the processing of renewal applications. The Commission is unable to accept volunteer service which is not specifically provided for by statute. *See*, 31 U.S.C. § 1342.

4. There were a number of comments filed in Docket 95-57 which opposed the affording of examination credit to a former licensee without administration of an examination. Among these was the National Conference of VECs, which argued that Amateurs who have been away from the avocation for long periods of time would find that the Amateur Service and its regulations will have substantively changed, and that the examination syllabus provided the necessary curriculum and the basis for grant of a new license.<sup>1</sup> Overall, most of the comments opposed the Commission's proposal to afford examination credit for expired operator license holders, because of concerns about uniformity of demonstration of proficiency in the examination process. It was also noted that an Amateur license is valid for ten years and there is a two-year grace period within which a licensee can renew an Amateur license quickly and easily, and that anyone who does not avail themselves of the opportunity should have to submit to reexamination thereafter. Whether or not these arguments provide a compelling reason not to adopt the examination element credit as proposed now by the Anchorage VEC in RM-11629 is subject to debate, but they do establish that there is not a compelling need to implement examination element credit for expired licensees on a short-term, temporary basis pursuant to the requested waiver.

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<sup>1</sup> ARRL disagreed with that argument at the time, suggesting that a lifetime operator license was functionally equivalent to periodic license renewals, which did not require any demonstration of current operator capability. However, again, the Commission's proposal for element credit for lapsed licenses differed conceptually from the ARRL's proposed lifetime operator license.

5. The Commission's *Report and Order*, FCC 97-99, released April 1, 1997, stated at Paragraphs 19 and 20 thereof, in relevant part, as follows:

In view of the opposition expressed in the comments, we decline to adopt our proposal to give examination credit for licenses formerly held. Persons who allow their amateur operator license to expire will have to pass the requisite examinations if they later decide to obtain another amateur operator license. We do not believe that attending an examination session is a hardship. The VEs provide abundant examination opportunities... We believe that our procedures provide ample notification and opportunity for license renewal. The license expiration date is shown on our licensee data base, so that it can be obtained (sic) through the Internet even if the license document is lost. Providers in the private sector often use this information to remind licensees that expiration is about to occur. For those persons who inadvertently fail to renew, a two-year grace period is allowed... Further, we have made the license renewal process as simple as possible by expanding our electronic filing procedures to include license renewal... We would... have to develop and maintain a separate data base for the purpose of maintaining indefinitely records of amateur operators who allow their station license to expire. It would not be in the public interest to expand resources for such increased record retention.

(footnotes omitted)

Accordingly, the Commission specifically declined in 1997 to adopt the precise proposal now advocated by the Anchorage VEC in RM-11629. Review of the issue now may be timely, but it should be done in the context of a normal notice-and-comment rulemaking, not by waiver.

## **II. The Justification Offered for the Waiver Request is Inadequate.**

6. The Anchorage VEC's Waiver Request notes as a justification for the waiver that its underlying Petition is presently pending and that the comment period on the Petition has closed. It notes that "all of the comments that were timely filed in this proceeding support the Anchorage VEC's request. No unfavorable comments were received." Actually, the ECFS, as of August 8, 2011, reflects the filing of only one comment *on the Petition*, filed by an individual. The other three items in the ECFS to

date in the file on RM-11629 are the Anchorage VEC Petition, the FCC public notice of the filing of the Petition, and the Anchorage VEC waiver request. It is unclear what the comments would show were the Commission to put the issue out for comment in the form of a Notice of Proposed Rule Making or a Notice of Inquiry, but there is presently too little indication of support for the Petition from the single comment filed to date to justify prejudgment of the Petition by grant of this waiver.

7. The Anchorage VEC attempts to justify the Waiver Request by the following arguments:

- (1) Individuals will be able to obtain a new license grant at an early date, allowing them to again participate in normal amateur radio activities.
- (2) There will be no negative impact on Commission staff, the VEC system or the Amateur community.
- (3) There will be an “immediate expansion” of the pool of trained and experienced operators available for use in time of national or regional emergency.
- (4) Several of the potential beneficiaries of the change are “of advanced years” and are interested in “prompt resolution of this action”.
- (5) There is “ample precedent” for the waiver due to previous Commission rule changes, allowing credit for passing a previous version of element 3 credit even if the license grant had expired, and for telegraphy credit under certain circumstances.

8. Even if the justifications cited by the Anchorage VEC in support of the waiver were all accurate (which is not the case), they are not sufficient justification for grant of a temporary waiver of the Commission’s rules relative to examination element credit. They might serve as partial justifications for the underlying Petition, but not for the temporary Waiver Request. To obtain a waiver, a petitioner must demonstrate either: (i) that the underlying purpose of the rule(s) would not be served or would be frustrated by

application to the present case and that a grant of the waiver would be in the public interest; or (ii) that, in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or that there is no reasonable alternative.<sup>2</sup> The Anchorage VEC has attempted to demonstrate that the waiver would be in the public interest, but it has not even attempted to meet the other requirements for either of the two alternative justifications for a temporary waiver. The examination element credit limitations in Section 97.505(a) of the Rules may or may not require change through the rulemaking process that the Anchorage VEC has initiated in the normal course. That determination, however, has completely different criteria than those required to justify a temporary waiver.

9. There has been no showing made by the Anchorage VEC that the underlying purpose of the rule would not be served or would be frustrated absent the waiver. The purpose of the rule is to provide examination credit to those who have timely renewed their existing licenses during the license term or within the grace period. The waiver, on the other hand, would provide examination credit for a completely different class of individuals: those whose Amateur licenses may have been expired for more than two (and perhaps many) years. The purposes of the rule are therefore unrelated to the purposes of the temporary waiver. Nor can it be said that the application of Section 97.505(a) of the Commission's rules to all persons would be in any sense inequitable, unduly burdensome, or contrary to the public interest, or that there is no reasonable alternative. Indeed, the Commission has held, as recently as 1997 that the relatively simple procedures for license renewal, the ample opportunities for VE-administered

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<sup>2</sup> 47 C.F.R. § 1.925(b)(3)(i)-(ii).

examinations, and the “safety valve” provided by the two-year grace period all serve to make unnecessary any other accommodation for those who, whether inadvertently or deliberately, allow their licenses to expire beyond the two-year grace period for renewal.

10. Therefore, though it is quite reasonable, if the record supports it, for the Commission to take another look at the issue of examination credit for in a rulemaking proceeding, there is nothing that has been offered to date by the Anchorage VEC that would justify the grant of a temporary waiver in this context. There is no shortage of opportunities for examinations for former licensees to re-obtain their lapsed licenses. Any physically handicapped individuals must be and are accommodated in terms of Amateur Radio licensing opportunities. The status quo does not prejudice anyone; and all individuals are subject to the same requirements. As to the “ample precedent” cited by the Anchorage VEC for the waiver, it is submitted that the precedent offered is not precedent for a temporary waiver at all. The element 3 credit or element 1 credit award examples cited by the Anchorage VEC in its Waiver Request were in each case the result of concluded, notice-and-comment rulemaking proceedings. No temporary waivers were granted when the rules were changed to permit element credit in the cited examples.

11. The argument of the Anchorage VEC that grant of the Waiver Request will provide an “immediate expansion” of the pool of trained and experienced operators available for use in time of national or regional emergency is open to debate. ARRL fully acknowledges the proven, reliable communication skills of licensed radio Amateurs in times of emergency and disaster. Those skilled licensees, however, are typically active in emergency communications drills and training exercises, and there is no evidence that those whose licenses have lapsed for long periods of time are similarly able to



“immediately” provide emergency communications services. While they might be able to provide, or resume providing such services after some period of resumption of Amateur Radio activities, the Anchorage VEC has not shown that a grant of the waiver will provide an “immediate expansion” of a pool of skilled communicators.

12. Grant of a temporary waiver of rules regarding element credit for Amateur Radio licensing is uniquely inappropriate because there are obvious inequities that would arise if the temporary waiver is granted and the underlying petition ultimately is denied or dismissed. In that case, persons with expired licenses who had been permitted to renew their Amateur licenses would either have to be allowed to keep those renewed licenses or else they would be taken away.<sup>3</sup> Revoking them after the renewed license grant would be an absurd result, but affording a narrow class of person an examination waiver denied later to others similarly situated would be unfair to those who would not be afforded that opportunity after the denial of the Petition and the expiration of the waiver process. This is not the same as a temporary waiver that deals with operating privileges or technical standards that are easily changed or adjusted after the fact. It is obvious that the proposed Anchorage VEC waiver prejudices the outcome of RM-11629 and it would make its grant a *fait accompli*. Should the Commission grant the temporary waiver, it is tantamount to grant of the underlying petition. Indeed, it appears that the Waiver Request is principally

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<sup>3</sup> Contrary to the Anchorage VEC argument that there will be no burden on the VECs or the Commission from grant of the waiver, the waiver would provide a record-keeping burden for the VECs and for the Commission. Detailed records would have to be kept showing who was granted what examination credits and who was given what license grants under the waiver, in case RM-11629 is ultimately denied and the grants have to be rescinded. It would be necessary for the Commission to notify all recipients of licenses granted pursuant to the waiver that their license grants were rescinded. A hearing would be required in each case, since a license grant cannot be revoked without such. See, 47 U.S.C. § 316. Furthermore, Anchorage VEC proposes to implement a series of new certifications and affidavits which are not now required, and it requires substantial authentication requirements. See Paragraph 13 *infra*.

an effort by the Anchorage VEC to bolster (or amend) the underlying Petition for Rule Making.<sup>4</sup>

13. Appendix B to the Waiver Request, which sets forth procedures for the VECs to use should the temporary waiver be granted, raises a series of other issues. First of all, Appendix B is internally inconsistent. At Item 1, it allows (but apparently does not require) VECs and VEs to accept as proof of element credit entitlement an expired Amateur Radio license and proof of identity of the claimant. However, Item 2 allows the claimant to provide alternative proof which the VECs and VEs are not specifically authorized to accept, such as call book information, unspecified “database” entries, or a letter from “an appropriate agency” certifying that the person did hold an Amateur license. It is not clear from this what constitutes sufficient proof, or what the VECs are authorized to accept, if anything, other than an expired Amateur license and proof of identity. Item 3 requires the submission of an “affidavit” attesting to the identity of the applicant. It is unclear whether this would be forwarded to the Commission with an application and with “appropriate documentation” (whatever that is) of prior licensing, or what form the “affidavit” would have to take. Item 4 of Appendix B requires a certification (the form of which is likewise not specified) indicating that the applicant has “never” been subject to any “FCC action” involving suspension or revocation of a license, or “other administrative sanction” including surrender of a license to avoid enforcement proceedings. This limitation is rather broad, and would include even

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<sup>4</sup> Anchorage VEC states at page 2 of the waiver request that several suggestions received in the “comments” (sic) filed with respect to the Petition have been incorporated in the waiver request “appendix.” There are actually two appendices. The first, Appendix A, sets forth language for a revised Rule Section 97.505(a) and (b). Appendix B sets forth some procedures for VECs to use in affording element credit which, as discussed herein, raise other issues. The presence of Appendix A indicates that the Waiver Request is actually an amendment to the Anchorage VEC Petition for Rule Making.

Commission monetary forfeitures affecting some other radio service in which the applicant may have held licenses, which would not have risen to the level of an Amateur Radio license revocation. Finally with respect to Appendix B, Item 5 thereof specifies that the application filed will be an application for a new license. The problem with this, as ARRL argued in Docket 95-57, is that VEs and VECs are not permitted by the enabling legislation to take actions other than to administer examinations to candidates for licenses. Processing an application for a new license without an examination is beyond the scope of the statutory authority of these volunteers and the Commission arguably has no authority to accept that service.

14. The point of the foregoing is not to prejudge the merits of RM-11629, but to show that the details of the suggested procedures *during the waiver period* are not firmed up sufficiently to permit the Commission to grant a temporary waiver in this instance. These details should be thoroughly addressed and resolved in the context of a full rulemaking proceeding if the Commission intends to proceed with such in response to RM-11629.

### **III. Conclusions**

15. The Commission has in the past declined to adopt a proposal to afford examination element credit to persons whose licenses have lapsed and are beyond the statutory grace period. It did so because the comments received in response to the Commission's Notice of Proposed Rule Making were principally opposed to the proposal. It is reasonable for the Commission to revisit that same issue now, some 14 years later, if the circumstances justify it. However, the grant of a temporary waiver to afford the same relief is neither justified nor appropriate in this instance, in light of the

very specific prior rejection by the Commission of the precise relief requested in RM-11629 and in the Waiver Request. The Petitioner has failed to satisfy, or even address, the well-established requirements for a waiver. The proffered justifications offered by Anchorage VEC go to the merits of its underlying Petition for Rule Making but do not establish a basis for implementing relief by waiver now. There is no urgency to the relief requested in the Anchorage VEC's Petition for Rule Making, because, as the Commission has itself stated: (1) there are ample opportunities for candidates to take examinations; (2) those opportunities are convenient; (3) the term of an Amateur Radio license is long and renewal procedures are convenient and available as well; and (4) there is a two-year grace period for expired licensees to renew their licenses after the date of expiration. Given these available options, the Anchorage VEC has not established a need for a temporary waiver. Finally, the factual assertions made by the Petitioner in an attempt to justify the waiver are subject to debate, and in any event are not quantified or substantiated in the Waiver Request. Grant of the temporary waiver in this instance would quite obviously prejudice the outcome of RM-11629. If for any reason RM-11629 is denied or dismissed, those who re-obtained licenses pursuant to the temporary waiver would either have been given a privilege not afforded others similarly situated, or else they would have their reinstated/renewed licenses revoked at a later date. Neither outcome is equitable.

Accordingly, ARRL, the National Association for Amateur Radio, respectfully requests that the Commission process RM-11629 in the normal course, and either proceed with a rulemaking proceeding based on the Petition or dismiss it, as the record indicates. However, the Commission should *not* grant the requested temporary waiver for

the reasons stated herein. The Waiver Request should instead be dismissed or denied.

Respectfully submitted,

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