

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

In the Matter of)
)
TERMINATION OF CERTAIN) **CG Docket 11-99**
PROCEEDINGS AS DORMANT)

To: The Commission

**COMMENTS OF ARRL, THE NATIONAL ASSOCIATION
FOR AMATEUR RADIO**

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 11-992, 26 FCC Rcd. 7850, released June 3, 2011 (the Notice), hereby respectfully submits its comments in this proceeding.¹ In response to the Consumer and Governmental Affairs Bureau's (CGB) request for comments on the list of dockets and rulemaking petitions under consideration for termination, and in the interest of the Amateur Radio Service in effective, timely regulatory oversight, ARRL interposes no objection to the termination of the proceedings listed in Attachment A of the Notice, save for one. ARRL states as follows:

1. The Commission, and specifically the Consumer and Governmental Affairs Bureau, are to be commended for the effort in this proceeding to resolve by termination a large number of long-pending and mostly outdated docket proceedings. The instant Notice is welcome because it represents a continuation of the Commission's focus on efficiency, transparency and expeditious resolution of rulemaking proceedings. There have been many Commission docket proceedings that have taken years to resolve, and

¹ The Notice was published in the Federal Register on June 20, 2011. Therefore, these comments are timely filed.

over a period of years, the Commission's timeliness in resolving rulemaking proceedings has suffered to the point that the Agency cannot be fairly described as responsive. The current Commission has done far better than its predecessors in this respect, but there remains a backlog and a need to speed up the process. One step in expediting the resolution of docket proceedings, and in making the Commission more responsive to technological change is to "clear the decks" of old, stale proceedings that have not as yet been terminated, but which have either been rendered moot by subsequent proceedings or resolved in substance by the issuance of orders. Though these have not been terminated as a matter of form, there is no good reason to keep them open.

2. Most of the numerous petitions and other proceedings listed in Attachment A to the Notice in this proceeding pertaining to the Amateur Radio Service fall into one of those two categories. ARRL has carefully reviewed each of the listed proceedings proposed for termination, in the Wireless Telecommunications Bureau, the International Bureau, the Office of Engineering and Technology, and in the Enforcement Bureau. Of the 45 Wireless Bureau docket proceedings proposed in the Notice for termination that relate to the Amateur Service, all have either been (1) rendered moot and of no current relevance to the Amateur Service by virtue of intervening or superseding regulatory changes, or (2) substantively resolved by the issuance of Commission orders in these proceedings. Although several of these 45 Amateur Radio-related proceedings were initiated by ARRL, they can in ARRL's view be terminated without prejudice to the Amateur Radio Service. Any further Commission action on the same subjects or issues raised in those old proceedings that is necessary in the future would in any case require a substantial amount of updating of the record in order to justify further Commission

proceedings with respect to them.² Thus, a new proceeding would be necessary in most cases, so as to address changed intervening circumstances.

3. Neither does ARRL have any concern with the termination of the few proceedings listed in Attachment A that were Enforcement Bureau-related items pertaining to Amateur Service licensees. Without exception, those matters appear to have been resolved and the circumstances of each appear to justify terminating the proceeding now.

4. With respect to the Office of Engineering and Technology dockets slated for termination, however, there is one Amateur Radio-related proceeding that, in ARRL's view, should not be terminated, but retained in open status. The Commission's procedural rules adopted in February of this year³ specify that proceedings in which petitions addressing the merits are pending should not be terminated absent the consent of the parties involved. ARRL does not consent to the termination of the proceeding initiated by its rulemaking petition, RM-10165, pertaining to the "Amendment of Parts 2 and 97 of the Commission's Rules Regarding the 2300-2305 MHz Band." The petition requested the change in the allocation status of the Amateur Radio Service domestically in that band from Secondary to Primary. ARRL's Petition was filed May 7, 2001 and it was placed on Public Notice July 2, 2001 in Report Number 2491. An Order, DA 02-2587 was released October 10, 2002 by the Office of Engineering and Technology dismissing this and two other petitions pertaining to the 2300-2305 MHz band. However, that Order did not finally resolve the issue of the allocation status of the Amateur Service in the

² ARRL understands that some of the proceedings listed are those in which no Commission order may have been issued, but which are technically open proceedings, with respect to which no pleadings have been filed since, at the latest, December 31, 2004.

³ *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd. 1594 (2011).

2300-2305 MHz band, or ARRL's request for a Primary allocation in that segment.

Rather, the Commission merely *postponed* a decision with respect to the allocation status of that band until some unspecified future time. The Commission stated at paragraph 13 of the October 10, 2002 Order as follows:

Since we are dismissing the Petitions for Rulemaking from Microtrax and AeroAstro for access to this spectrum, amateur operators' weak signal communications in the 2300-2305 MHz band will be protected if the amateur allocation remains secondary. This band will remain in the Commission's reserve, and the status quo in the band will be maintained until the Commission reevaluates the spectrum reserve at some future date. At that time the Commission can address any modifications to the allocation status for the amateur service that may be appropriate. Accordingly, we are also dismissing the ARRL Petition for a primary allocation to the amateur service in the 2300-2305 MHz band.

5. The status of the Amateur Radio allocation at 2300-2305 MHz is of current relevance because of actions taken by the Commission with respect to an adjacent band at, *inter alia*, 2305-2320 MHz and because of other unrelated proposals for the use of the 2300-2305 MHz band. In a *Report and Order and Second Report and Order*, FCC 10-82, 75 Fed. Reg. 45058, released May 20, 2010 in WT Docket 07-293, the Commission amended certain technical rules (47 C.F.R. Part 27) governing the Wireless Communications Service (WCS) in the 2305-2320 MHz band, so as to delete the effective limitations on WCS terrestrial operations to fixed services, and to enable licensees to provide mobile broadband services in 25 megahertz of the WCS band. In so doing, the Commission indicated that out-of-band emissions from WCS, when expanded to permit mobile broadband and portable devices at up to 250 mW EIRP, will have an effect on Amateur operations in the 2300-2305 MHz band:

We note that some amateur stations operating around 2304 MHz may experience an increased antenna noise temperature caused by the implementation of mobile WCS operations, and will have to tolerate this change in the RF environment. Due to the technical flexibility allowed to amateur stations in Part 97 of our rules, however, we believe that operators of these stations may be able to offset or mitigate the effects of this change by relocating or redirecting their antennas, or by making other permitted technical adjustments.

Id. at Footnote 405.

6. This conclusion, and the issue of interference to Amateur Radio operation at 2300-2305 MHz has been challenged by ARRL in a pending *Petition for Clarification or Partial Reconsideration* filed September 1, 2010.⁴ Furthermore, in the currently open ET Docket 08-59, some comments counterproposed the use of the 2300-2305 MHz band for Medical Body Area Networks in lieu of the 2360-2400 MHz band.

7. Because of the current relevance of the allocation status (and interference protection status) of the Amateur Service at 2300-2305 MHz, and because the Commission in October of 2002 did not make any decision with respect to the allocation status of that band, instead postponing it to some unspecified future time, ARRL is of the view that the RM-10165 proceeding should remain open and pending, and that the Commission should revisit the allocation status of the Amateur Radio Service at 2300-2305 MHz, and ARRL's justifications offered for a change from Secondary to Primary status in that band now.

Therefore, for the above reasons, ARRL, the national association for Amateur Radio, respectfully requests that the Commission not terminate RM-10165, but instead

⁴ The International Radio Regulations, at RR 4.5, and the Commission's rules, Section 2.102(f), make no distinction between secondary and primary services in their entitlement to protection from out-of-band and spurious emissions from a service operating in an adjacent band. Secondary services are entitled to such protection irrespective of the allocation status of the source of the interference in the adjacent band.

revisit the arguments raised in that Petition and address the postponed consideration of a Primary allocation for the Amateur Service at 2300-2305 MHz. ARRL interposes no objection to the termination of the remainder of the proceedings listed in Appendix A to the June 3, 2011 *Public Notice* in this proceeding.

Respectfully submitted,

**ARRL, THE NATIONAL ASSOCIATION FOR
AMATEUR RADIO**

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July 20, 2011