

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

| | | |
|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of the Amateur Service Rules |) | WT Docket No. 12-283 |
| Governing Qualifying Examination Systems and |) | |
| Other Matters |) | |
| |) | |
| Amendment of Part 97 of the Commission’s |) | RM-11629 |
| Amateur Service Rules to Give Permanent Credit |) | |
| for Examination Elements Passed |) | |
| |) | |
| Amendment of Part 97 of the Commission’s Rules |) | RM-11625 |
| to Facilitate Use in the Amateur Radio Service of |) | |
| Single Slot Time Division Multiple Access |) | |
| Telephony and Data Emissions |) | |
| |) | |
| Request for Temporary Waiver |) | |
| |) | |
| Amendment of the Amateur Service Rules |) | WT Docket No. 09-209 |
| Governing Vanity and Club Station Call Signs |) | |

NOTICE OF PROPOSED RULE MAKING AND ORDER

Adopted: October 1, 2012

Released: October 2, 2012

Comment Date: (60 days after date of publication in the Federal Register)

Reply Comment Date: (90 days after date of publication in the Federal Register)

By the Commission:

I. INTRODUCTION

1. In this *Notice of Proposed Rule Making and Order*, we propose to amend Part 97 of the Commission’s Rules regarding administration of examinations and examination element credit for licenses in the Amateur Radio Service. Specifically, in the *Notice of Proposed Rule Making (NPRM)* we propose in response to a petition for rulemaking filed by the Anchorage Volunteer Examiner Coordinator (Anchorage VEC) to grant examination credit for expired amateur operator licenses, instead of requiring former licensees to retest.¹ In conjunction with this change, we propose to shorten the grace period during which an expired amateur license may be renewed and to revise the vanity call sign system correspondingly. We also propose to reduce the number of volunteer examiners needed to administer an amateur license examination, and we seek comment on amending the rules to permit remote test administration. Finally, in response to a petition for rulemaking filed by the American Radio Relay League, Inc. (ARRL), we propose to amend the Amateur Service rules to allow amateur stations to transmit certain additional emission types,² but we deny ARRL’s request for a blanket waiver pending the

¹ See Petition for Rule Making, RM-11629 (filed April 15, 2011) (Anchorage VEC Petition).

² See Petition for Rule Making, RM-11625 (filed March 15, 2011) (ARRL Petition).

resolution of the rulemaking proceeding.³

II. DISCUSSION

A. Examination Credit

2. To demonstrate that he or she is qualified to be issued a new or upgraded amateur operator license, a person must pass an examination, or otherwise receive credit for the examination element(s) required to qualify for the relevant license class.⁴ Applications for new or upgraded licenses must be filed through a volunteer-examiner coordinator (VEC),⁵ which obtains the applicant information from volunteer examiners (VEs).⁶ VEs administer examination sessions and issue a certificate of successful completion of an examination (CSCE) to an examinee who scores a passing grade on an examination element.⁷ A person also receives credit for an examination element if he or she presents either a CSCE for that element that was issued within the previous 365 days or an unexpired (or expired but within the grace period for renewal) amateur operator license for a license of a class that required passage of that element.⁸

3. With one narrow exception (expired Technician Class operator licenses granted before March 21, 1987),⁹ element credit is not given for an amateur operator license that has expired and is beyond the grace period for renewal. The grace period for renewal of an amateur operator license is two years,¹⁰ which is also the period of time after which the call sign associated with an expired amateur operator license becomes available for reassignment through the vanity call sign system.¹¹

1. Credit for expired licenses

4. Anchorage VEC asserts that it is unfair that after the grace period for renewal of an amateur radio license ends, a former licensee “loses all credit for any elements passed, and must start all over if they want to continue their amateur radio activities.”¹² Licensees who renew their licenses are not

³ See Request for Temporary Waiver (filed March 15, 2011) (ARRL Waiver Request).

⁴ See 47 C.F.R. §§ 97.501, 97.503.

⁵ See 47 C.F.R. §§ 97.17(b)(1), 97.21(a)(2), 97.509(m), 97.519(b)(3).

⁶ See 47 C.F.R. § 97.509(a). VEs are amateur licensees who meet certain qualifications. See 47 C.F.R. § 97.509(b).

⁷ See 47 C.F.R. § 97.509(l).

⁸ See 47 C.F.R. § 97.505.

⁹ A holder of an expired Technician Class operator license granted before March 21, 1987 receives credit for examination element 3. See 47 C.F.R. § 97.505(a)(4). Element 3 is the examination element needed to upgrade from Technician Class to General Class. See 47 C.F.R. § 97.501(b), (c). Formerly, the written examination for Technician Class and General Class was the same. (The difference in the requirements for the two licenses was in the Morse Code test.) In 1987, the Commission split the element into one examination for the Technician Class license and an additional examination for the General Class license, but provided that licensees who had passed the consolidated examination would still receive credit for the written examination required for a General Class license. See Amendment of the Amateur Radio Service Rules to Expand the Privileges Available to Novice Operators, Report and Order, PR Docket No. 86-161, 1 FCC Rcd 727, 731 ¶ 21 (1987).

¹⁰ See 47 C.F.R. § 97.21(b).

¹¹ See 47 C.F.R. § 97.19(c)(1).

¹² See Anchorage VEC Petition at 2. The Anchorage VEC Petition went on public notice on April 27, 2011. See Public Notice, Report No. 2930 (CGB rel. April 27, 2011). One comment was received, which supported the (continued....)

required to sit for reexamination regardless of how long ago they were first licensed. Anchorage VEC argues that the passage of time does not invalidate the knowledge of a person with an expired license any more than it does the knowledge of a person renewing a license.¹³

5. We recognize that the rules treat a former licensee differently than a licensee who passed the same examination(s) but continuously renewed his or her license. We also agree with Anchorage VEC that the fact that an individual allowed his or her license to expire more than two years ago does not necessarily mean that the person no longer possess adequate knowledge of the subject. That a license was continuously renewed does not establish that the licensee remained active in the amateur service, for amateur licensees are not required to operate their stations in order to remain licensed.¹⁴ As Stephen J. Melachrinis states in his comment on the Anchorage VEC petition, “[I]f the only distinction between one person who passed the license test(s) 20 years ago (and renewed his license) and another who passed the same license test(s) (and didn’t renew his license) is purely the administrative act of renewal, then it is reasonable to postulate that another administrative act (application for issuance of a new license, not retaking of all tests) is all it should take to restore equal status.”¹⁵ We note that this proposal, if adopted, would not result in former licensees receiving any more privileges than they would have if they had been continually licensed.¹⁶

6. We note that the Commission addressed a similar proposal in 1997. At that time, commenters generally opposed allowing examination credit for expired licenses, and the Commission declined to take the action now requested by Anchorage VEC.¹⁷ The Commission noted the opposition to the proposal to allow examination credit for expired licenses, and concluded that requiring licensees to either renew their licenses or retest before they may reenter the amateur service does not impose a hardship.¹⁸ While we continue to believe that requiring licensees to either file a timely renewal application or retake the necessary examination before they can be relicensed does not impose an unreasonable burden, we are skeptical that it is actually necessary to require former licensees to retest.

(Continued from previous page) _____
petition but suggested some changes to the proposed rules. See Stephen J. Melachrinis (Melachrinis) Comments at 1, 3.

¹³ Anchorage VEC Petition at 2-4. Anchorage VEC also filed a request for blanket waiver of Section 97.505(a) of the Commission’s Rules, 47 C.F.R. § 97.505(a), to allow volunteer examiners to give element credit for certain expired licenses pending the outcome of this rulemaking proceeding. See Anchorage VEC Request for Waiver (filed July 6, 2011). The Wireless Telecommunications Bureau’s Mobility Division denied the waiver request. See Anchorage Volunteer Examiner Coordinator, *Order*, 27 FCC Rcd 404 (WTB MD 2012).

¹⁴ See Amendment of Part 97 of the Commission’s Rules to Permit Telephony Operation in the 7075-7100 kHz Frequency Band in the Caribbean Insular Areas, *Report and Order*, PR Docket No. 85-104, 59 Rad. Reg. 2d (P & F) 906, ¶ 7 (1986). It is not unusual for amateur licensees who have not operated for years or decades due to personal circumstances but who maintained their licenses to resume activity upon reaching a different stage of their lives.

¹⁵ See Melachrinis Comments at 1.

¹⁶ Former Advanced Class licensees would receive General Class operator privileges under our proposal because no new Advanced Class licenses are issued. See 47 C.F.R. § 97.17(a). In addition, former Novice Class licensees would not be eligible to receive credit for any written examination element because the written examination these licensees passed does not have a corresponding examination element in the current license examination structure. Compare 47 C.F.R. § 97.503 with 47 C.F.R. § 97.503 (1998).

¹⁷ See Amendments to the Amateur Service Rules Including Amendments for Examination Credit, Eligibility for a Club Station License, Recognition of the Volunteer Examiner Session Manager, a Special Event Call Sign System, and Self-Assigned Indicator in the Station Identification, *Report and Order*, WT Docket No. 95-57, 12 FCC Rcd 3804, 3811-12 ¶¶ 18-19 (1997) (*Examination Credit Report and Order*).

¹⁸ *Id.* at 3811-12 ¶¶ 19-20.

7. Accordingly, we propose to revise Section 97.505 to require that VEs give examination credit to an applicant who can demonstrate that he or she formerly held a particular class of license.¹⁹ We seek comment on this proposal, which we believe will encourage former amateur operators to become involved again in the technical self-training and public service communications opportunities provided by the amateur service.²⁰ It also could reduce costs (in time as well as money) incurred by former licensees seeking to reenter the amateur service. We ask commenters to address these costs and benefits. We also ask commenters to discuss whether particular documentation or safeguards should be required in order to prevent anyone from fraudulently obtaining a new license using the expired license of a different person with the same name.²¹

8. We also invite commenters to discuss whether we should adhere to the current policy for the reasons stated by the Commission in 1997. In addition, we seek comment on whether it is reasonable to assume that a person who did not renew his or her license has retained the requisite knowledge, and whether this assumption is reasonable regardless of the passage of time – *i.e.*, should there be a limit on how long an applicant should receive element credit for an expired license?

9. Finally, as noted above, Section 97.505(a)(4) of the Commission's Rules provides that a holder of an expired Technician Class operator license granted before March 21, 1987 receives credit for examination element 3. We seek comment on whether we should retain this rule. While we are not reconsidering the Commission's conclusion that those former licensees should receive credit for the written examination required for a General Class license, we question whether the rule still has any practical effect. That is, are there any remaining holders of expired pre-1987 Technician Class licenses who intend to seek General or Amateur Extra Class licenses, or can we streamline the rule by deleting this provision as obsolete? Similarly, we seek comment on whether Section 97.505, as proposed to be amended in this proceeding, should make provision for expired Conditional Class licenses,²² which were phased out by renewing them as General Class licenses beginning in 1976.²³

2. Validity of CSCEs

10. Element credit currently is awarded only for a CSCE that was issued within the previous year, as previously noted. We propose above to eliminate the element credit distinction between a person who passed an examination and kept his or her license current and a person who passed the same examination but let his or her license expire. Arguably, we should also eliminate the element credit distinction between a person who passed an examination and applied for a license within a year and a person who passed the same examination but did not apply for a license in that time, on the grounds that the passage of a year does not substantially affect the latter examinee's knowledge. We note, however, that a CSCE also provides temporary authority for an upgrading licensee to exercise the rights and privileges of the higher operator class until disposition of the upgrade application or 365 days, whichever comes

¹⁹ We also propose to delete paragraph (b) of Section 97.505, which currently states, "No examination credit, except as herein provided, shall be allowed on the basis of having held any other license grant or document." We believe that this provision is unnecessary, as it will be clear from the rule that element credit is available only as set forth therein.

²⁰ See 47 C.F.R. § 97.1(a), (b).

²¹ See Anchorage VEC Petition at 5.

²² See Melachrinis Comments at 3.

²³ See Amendment of Part 97 of the Commission's Rules Concerning Operator Classes, Privileges, and Requirements in the Amateur Radio Service, *First Report and Order*, Docket 20282, 59 F.C.C. 2d 877, 879 ¶ 9 (1976).

first.²⁴ We are concerned that it may be anomalous or confusing to create a difference between the period during which a CSCE provides temporary operating authority and the period during which a CSCE provides element credit. Consequently, we seek comment on whether to amend the rules to provide that a CSCE provides element credit for the holder's lifetime, and we also seek comment on the costs and benefits of either course. In addition, we seek comment on whether it is reasonable to assume that a person who did not obtain a license after passing the required examination element(s) has retained the requisite knowledge, and whether this assumption is reasonable regardless of the passage of time – *i.e.*, should there be a limit on how long an applicant should receive element credit for a CSCE?

3. Grace period for renewal

11. As mentioned above, Section 97.21(b) provides that a person whose amateur station license grant has expired may still apply for renewal of the license during a two-year grace period.²⁵ This allows individuals who forget to renew or experience unforeseen difficulties in renewing their license a period of time during which they may renew. A principal reason for providing this grace period is to allow amateur licensees to restore their operating privileges without sitting for reexamination.²⁶

12. Given that we are proposing to amend the rules to give former licensees examination credit for the element or elements they passed to obtain their expired licenses, we believe that a two-year grace period may no longer be necessary. Accordingly, we propose to reduce the grace period for renewal to six months (180 days), which we believe is a sufficient period of time for individuals who forget to renew or experience unforeseen difficulties when renewing their licenses.²⁷ Licensees who do not renew during the grace period would be able to obtain a new license under the rule changes proposed above and could then request their former call sign through the vanity call sign system if the call sign had not already been assigned to another licensee under the vanity call sign system. We seek comment on this proposal, and on whether the grace period should be shorter than six months (such as sixty or thirty days)²⁸ or even eliminated entirely. As discussed below,²⁹ shortening or eliminating the renewal grace period would make it possible to shorten the waiting period for vanity call signs associated with expired licenses if such action is appropriate. Commenters should address the costs and benefits of each

²⁴ See 47 C.F.R. §§ 1.931(b)(7), 97.9(b). There is no comparable procedure for a successful examinee who does not already hold a license. See Amendment of the Amateur Service Rules to Extend Temporary Operating Authority to New Amateur Operators, *Memorandum Opinion and Order (Proceeding Terminated)*, RM-8288, 10 FCC Rcd 4928, 4928 ¶¶ 2-5 (1995).

²⁵ Because the license grant has expired, the former licensee does not have any operating privileges or a call sign to use for identifying a station until the license is renewed. See 47 C.F.R. § 97.21(b).

²⁶ See Amendment of Part 97 to extend grace period for renewal of an expired Amateur Radio Service operator license, *Order*, 70 F.C.C. 2d 2172, 2172 ¶ 2 (1979).

²⁷ We note that private sector companies and amateur radio organizations routinely notify amateur radio operators of the pending expiration of their license, and offer renewal services. *Examination Credit Report and Order*, 12 FCC Rcd at 3812 ¶ 20.

²⁸ See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11486 ¶ 22 (1999) (stating that Wireless Radio Services renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under our rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing).

²⁹ See paras. 14-15, *infra*.

approach.

13. Conversely, we also seek comment on whether, instead of amending the rules to allow element credit for expired licenses, we should simply extend the renewal grace period for a substantial length of time (such as a ten-year grace period). Extending the grace period would provide former licensees with the same relief – permitting them to reenter the amateur service without retesting – with fewer administrative burdens on former licensees, VEs, and VECs.³⁰ As discussed below, however, extending the grace period could affect the vanity call sign system.

4. Vanity call sign waiting period

14. When the vanity call sign system was implemented, the Commission concluded that call signs should not be available for reassignment for two years following the death of a licensee, or expiration or termination of the license for that call sign,³¹ except that close relatives of a deceased licensee would be exempt from the two-year waiting period following the licensee's death.³² The Commission set the waiting period at two years in part because it corresponds with the renewal grace period.³³ Because we propose above to shorten the grace period to six months, we also propose to reduce the time before a call sign becomes available for reassignment to six months.

15. We note, however, that correspondence with the grace period was not the only reason identified by the Commission for a two-year waiting period. Other reasons were “to avoid confusion in over-the-air station identification, to maintain accuracy in the licensee data base, . . . to accommodate QSL bureaus” and to “preclude ‘trafficking in licenses’ where a licensee, in exchange for some type of consideration, vacates a desirable call sign so that another licensee could immediately apply for it before its assignability becomes known generally.”³⁴ The Commission also noted in that rulemaking proceeding that the two-year waiting period provides ample time for a close relative of a deceased licensee to obtain the same class of license as the deceased held, in order to be eligible to hold the deceased's former call sign.³⁵ While the vanity waiting period should not be shorter than the renewal grace period due to the possibility of conflicting license grants,³⁶ there is no practical reason why the waiting period could not be longer than the grace period. Consequently, we seek comment on whether we should shorten the vanity waiting period to reflect a shortened renewal grace period or instead retain the two-year waiting period regardless of any reduction in the grace period and on the costs and benefits of adopting either approach.

³⁰ Former licensees within the extended grace period would be able to file their applications directly with the Commission, rather than having to present their evidence of former licensure to a VE team. VEs and VECs would not have to review and forward the former licensee's information.

³¹ See Amendment of the Amateur Service Rules to Implement a Vanity Call Sign System, *Report and Order*, PR Docket No. 93-305, 10 FCC Rcd 1039, 1040 ¶ 11 (1995) (*Vanity Report and Order*); see also 47 C.F.R. § 97.19(c).

³² See *Vanity Report and Order*, 10 FCC Rcd at 1039-40 ¶¶ 6-7; see also 47 C.F.R. § 97.19(c)(3).

³³ See *Vanity Report and Order*, 10 FCC Rcd at 1040 ¶ 11.

³⁴ *Id.* A QSL bureau is an organization that facilitates the exchange of confirmation cards between amateur operators whose stations have communicated with each other. *Id.* at 1040 n.18.

³⁵ See Amendment of the Amateur Service Rules to Implement a Vanity Call Sign System, *Memorandum Opinion and Order*, PR Docket No. 93-305, 10 FCC Rcd 11135, 11137 ¶ 9 (1995).

³⁶ See Amendment of the Amateur Service Rules Governing Vanity and Club Station Call Signs, *Notice of Proposed Rule Making*, WT Docket No. 09-209, 24 FCC Rcd 14788, 14789 n.5 (2009) (“A waiting period shorter than the renewal grace period could lead to cases where the call sign on an expired license is assigned to another licensee, then the original licensee renews the license during the grace period, resulting in two active licenses with the same call sign.”).

B. Examination Administration

16. Examinations are administered by a team of at least three VEs who must be present and observing the examinee throughout the entire examination.³⁷ The VEs are responsible for the proper conduct and necessary supervision of each examination.³⁸ Each examinee must comply with the instructions given by the administering VEs, or the administering VEs must immediately terminate the examination.³⁹ The administering VEs must grade the examinee's answers immediately upon completion of each examination.⁴⁰ When the administering VEs determine that the examinee has passed the examination elements required for the operator license sought, they must certify that the examinee is qualified for the license grant and that they complied with the administering VE requirements.⁴¹

17. No VEC may accredit as a VE any person whom the VEC determines is not competent to perform the VE functions.⁴² A VEC also may not accredit someone if it otherwise determines that there are sufficient questions raised as to the person's integrity or honesty that could compromise the examinations.⁴³

1. Number of VEs

18. As noted above, our rules require that amateur operator license examinations be administered by a team of at least three VEs. Questions regarding whether three VEs are necessary to administer an examination sometimes come before the Commission in the context of claims that three VEs are not available at a particular location or time that an examinee would like to take an examination, or that an examinee must travel a great distance to a location where three VEs are available. This requirement can also cause VEs to incur travel expenses that amateur examinees may have to reimburse.⁴⁴ We note that unavailability of examination opportunities compromises one of the bases and purposes of the amateur service rules: to expand the existing number of trained operators, technicians, and electronics experts.⁴⁵

19. When the Commission established the VE system in 1983, it accepted commenters' suggestion that VE teams consist of three examiners.⁴⁶ The Commission stated, "The use of three examiners provides for cross-checking to assure the correctness of answers to examination questions, to assure proper completion of license applications, and to minimize the likelihood of any possible fraud or

³⁷ See 47 C.F.R. § 97.509(a), (c).

³⁸ See 47 C.F.R. § 97.509(c), (d).

³⁹ See 47 C.F.R. §§ 97.509(c), 97.511.

⁴⁰ See 47 C.F.R. § 97.509(h).

⁴¹ See 47 C.F.R. § 97.509(i). The certifying VEs are jointly and individually accountable for the proper administration of each examination element reported. *Id.*

⁴² See 47 C.F.R. § 97.525(a)(3).

⁴³ See 47 C.F.R. § 97.525(a)(4).

⁴⁴ See 47 C.F.R. § 97.527.

⁴⁵ See 47 C.F.R. § 97.1(d).

⁴⁶ See Use of Volunteers to Prepare and Administer Operator Examinations in the Amateur Radio Service, 48 Fed. Reg. 8090, ¶¶ 6-8 (1983).

abuse.”⁴⁷ We note that since the VE system was established, procedures have been developed by the VEs and VECs that have almost eliminated examination grading and application completion errors and that fraud or abuse has been minimal. The VECs have VE manuals that provide specific procedures to be followed in preparing for, conducting, and reporting the results of an examination session.⁴⁸ It is by hewing to these procedures that fraud and errors are avoided. We tentatively conclude that the required number of administering VEs can now be reduced without jeopardizing the integrity of the amateur operator license examination system.

20. Therefore, in order to increase the availability of examination opportunities, we propose to reduce the number of VEs required to administer an examination to two. We seek comment on this proposal. We believe that reducing the number of required VEs can increase the availability of examination opportunities (by enabling VEs to offer more frequent examination sessions, or examination sessions at more locations, or both), while not compromising the reasons the Commission decided that more than one VE is necessary. This in turn would reduce the difficulty and expense that some examinees and VEs experience in traveling to an amateur radio license examination session. We ask commenters to address the costs and benefits of reducing the required number of examiners. We also invite commenters to discuss whether we should adhere to the current policy for the reasons stated by the Commission in 1983.

2. Remote testing

21. As discussed above, our rules require that each administering VE be present and observing the examinee throughout the entire examination. In the years since the VE system was established, methods that would allow a VE examiner to observe an examinee from afar have been developed, such as audio and video links, either hard-wired to a site or available through the use of wireless Internet or satellite technologies. We note that such methods are commonly used by colleges to provide courses at locations around the globe and by businesses for teleconferencing among numerous locations simultaneously and to provide a myriad of services to consumers.

22. On very rare occasions, Commission staff has permitted VEs to use such means to remotely observe examination sessions held at isolated locations.⁴⁹ We seek comment on whether we should amend Section 97.509(c) to provide that, at the option of the administering VEs and the VEC coordinating the examination session, the VEs may be “present and observing” an examinee for purposes of the rule when they are using an audio and video system that can assure the proper conduct and necessary supervision of each examination. Commenters should address what, if any, specific requirements should be incorporated into the rule (such as requiring one VE to be physically present at the examination session) and whether remote testing should be permitted everywhere or only for examination sessions at less accessible locations (and how to define such locations). We believe that permitting remote examination administration can increase the availability of examination opportunities, which would reduce the difficulty and expense that some examinees and VEs experience in traveling to an amateur radio license examination session. We ask commenters to address the costs and benefits of allowing remote observation of examination sessions.

⁴⁷ See Amendment of Parts 0, 1, and 97 of the Commission’s Rules to allow the use of volunteers to prepare and administer operator examinations in the amateur radio service, *Report and Order*, PR Docket No. 83-27, 95 F.C.C. 2d 14, 17 ¶ 12 (1983)

⁴⁸ See, e.g., <http://www.arrl.org/ve-manual>, http://www.w5yi-vec.org/ve_manual.php.

⁴⁹ See, e.g., American Radio Relay League, “Kalaupapa, Hawaii Is Site of Second ARRL Remote VE Testing,” available at <http://www.arrl.org/news/kalaupapa-hawaii-is-site-of-second-arrl-remote-ve-testing>.

C. Morse Code Examination

23. We also propose to amend Sections 97.307, 97.507, and 97.509 of the Commission's Rules⁵⁰ to reflect that the Commission amended its rules to eliminate the requirement that certain amateur radio service licensees pass a Morse code examination.⁵¹ Most of these rule changes (*i.e.*, the changes to Sections 97.507 and 97.509) were adopted in that rulemaking proceeding,⁵² but were inadvertently omitted from the Federal Register summary⁵³ and thus never took effect. The proposed change to Section 97.307(f)(10) similarly would delete a reference to receiving element credit for passing a telegraphy examination.

D. Emission Types

24. Part 97 of the Commission's Rules specifies the emission types that may be transmitted on amateur frequencies.⁵⁴ For data (telemetry, telecommand, and computer communications), emission types may have A, C, D, F, G, H, J, or R as the first symbol; 1 as the second symbol; and D as the third symbol.⁵⁵ For telephony (speech and other sound emissions), emission types may have A, C, D, F, G, H, J, or R as the first symbol; 1, 2, or 3 as the second symbol; and E as the third symbol.⁵⁶

25. ARRL states that amateur service licensees have recently established numerous narrowband UHF repeater facilities using multiple time-slot Time Division Multiple Access (TDMA) repeaters and single-slot TDMA handheld digital transceivers, principally in the 70 centimeter (420-450 MHz) amateur service band.⁵⁷ Specifically, ARRL notes that a Motorola system used by some amateur radio operators uses two-slot TDMA technology for the repeater and single-slot TDMA emissions for the associated portable and mobile transceivers and that the system "specifies emission designators 7K60FXE in voice operation and 7K60FXD for data."⁵⁸ The present rules, however, do not appear to permit amateur stations to transmit single-slot TDMA emissions on amateur service channels above 30 MHz: as

⁵⁰ 47 C.F.R. §§ 97.307, 97.507, 97.509.

⁵¹ See Amendment of Part 97 of the Commission's Rules to Implement WRC-03 Regulations Applicable to Requirements for Operator Licenses in the Amateur Radio Service, *Report and Order and Order on Reconsideration*, WT Docket No. 05-235, 21 FCC Rcd 14797 (2006).

⁵² See *id.* at 14816-17.

⁵³ See 72 Fed. Reg. 3081 (2007).

⁵⁴ An emission designator describes an emission's characteristics. A minimum of three symbols is used to describe the basic characteristics of the radio emission. See 47 C.F.R. § 2.201. The first symbol designates the type of modulation. For example, F is used for frequency modulation. The second symbol designates the nature of the signal modulating the main carrier. For example, 7 is used for two or more channels containing quantized or digital information. The third symbol designates the type of information to be transmitted. For example, D is used for data transmission, and E is used for telephony. Where the nature of the signal modulating the main carrier or the type of information to be transmitted is not specifically listed in Section 2.201, the second or third symbol is X. See 47 C.F.R. § 2.201(c)(7), (d)(9).

⁵⁵ See 47 C.F.R. § 97.3(c)(2). Certain other data emission types also are permitted under particular circumstances. See *id.*; 47 C.F.R. § 97.307(f)(8).

⁵⁶ See 47 C.F.R. § 97.3(c)(5). Permissible phone emission types also include speech emissions having B as the first symbol; 7, 8, or 9 as the second symbol; and E as the third symbol. *Id.*

⁵⁷ See ARRL Petition at 1, 3-5. The ARRL Petition went on public notice on March 23, 2011. See *Public Notice*, Report No. 2928 (CGB rel. Mar. 23, 2011). Thirty-six comments were received, almost all supporting the petition.

⁵⁸ See ARRL Petition at 4.

discussed above, Part 97 does not specifically authorize any phone or data emission designators with X as the second symbol. Consequently, ARRL requests that the Commission amend its rules to revise Section 97.3(c) to include emission type FXE in the definition of a phone emission and to revise Section 97.307(f)(8) to allow amateur stations to transmit data emission type FXD.⁵⁹

26. One of the purposes of the amateur service is to contribute to the advancement of the radio art.⁶⁰ Allowing amateur stations to use communication technologies that are used in other radio services, such as TDMA technologies, allows amateur service licensees to experiment with and improve these technologies and, therefore, is consistent with the basis and purpose of the amateur service. For this reason, we agree with ARRL that the current rules allowing the use of multiple time-slot TDMA repeaters but not permitting amateur stations to transmit single-slot TDMA emissions may be unnecessarily impeding amateur radio operators in advancing the radio art.

27. Another purpose of the amateur service is to assist the public as a voluntary and noncommercial communications service, particularly with respect to providing emergency communications.⁶¹ Allowing amateur stations to use equipment that is in use in other radio services allows amateur service licensees to put, in this case, modern repeater systems on the air, thereby benefiting the public if these systems are needed to provide emergency communications.

28. The purpose of specifying emission designators for the amateur service is to relegate the transmission of certain inharmonious emission types to different segments of the frequency bands,⁶² while still allowing great flexibility in the types of emissions that may be transmitted by amateur stations.⁶³ We do not believe that this purpose is served by excluding FXE and FXD emissions. Accordingly, we propose to amend Section 97.3(c)(5) to allow emission type FXE as a phone emission and to amend Section 97.307(f)(8) to allow emission type FXD as a data emission. We believe that this proposed rule change would encourage individuals who can contribute to the advancement of the radio art to more fully utilize TDMA technologies in experimentation and promote more efficient use of the radio spectrum currently allocated to the amateur service. We request comment on this proposal, including with respect to its costs and benefits. We also seek comment on whether any other specific emission types should be permitted. For instance, ARRL points out that the rules do not specify that multi-slot TDMA phone emissions (F7E) are permitted.⁶⁴

E. Part 97 Waiver Request

29. Separately, ARRL filed a request for blanket waiver of certain Part 97 rules to permit amateur stations to transmit emission types FXD and FXE pending the outcome of this rulemaking proceeding.⁶⁵ Mobility Division staff reviewed the waiver request and concluded that it was deficient because the requested relief would not solve the problem that ARRL sought to address unless it also sought a waiver to permit amateur stations to transmit emission type F7E (because granting a waiver to

⁵⁹ *Id.* at 5.

⁶⁰ 47 C.F.R. § 97.1(b).

⁶¹ 47 C.F.R. § 97.1(a).

⁶² See Reorganization and Deregulation of Part 97 of the Rules Governing the Amateur Radio Services, *Notice of Proposed Rule Making*, PR Docket No. 88-139, 3 FCC Rcd 2076, 2078 ¶ 19 (1988).

⁶³ See Reorganization and Deregulation of Part 97 of the Rules Governing the Amateur Radio Services, *Report and Order*, PR Docket No. 88-139, 4 FCC Rcd 4719, 4719 ¶ 2, 4720 ¶ 9 (1989).

⁶⁴ See ARRL Petition at 7; see also, e.g., Six Meter FM Club of Crystal Lake, IL Comments at 1-2.

⁶⁵ See ARRL Waiver Request.

permit FXE emissions but not F7E emissions would create a situation where voice operation was permitted on mobile units but not on the associated repeaters). In July 2011, ARRL informed Mobility Division staff through its counsel that ARRL would amend the waiver request accordingly, but ARRL has not done so. Accordingly, we deny the waiver request.

III. CONCLUSION

30. In summary, we believe that the public interest will be served by revising the amateur service rules to make it easier for new and former amateur service licensees to enter or reenter the amateur service and to permit amateur stations to use technologies that stations in other services are allowed to use. We also believe that these proposed rule changes will allow amateur service licensees to better fulfill the purposes of the amateur service and will enhance the usefulness of the amateur service. We therefore seek comment on these proposed rule changes.

IV. PROCEDURAL MATTERS

31. *Initial Regulatory Flexibility Certification.* The Regulatory Flexibility Act (RFA)⁶⁶ 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.”⁶⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶⁹ 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).⁷⁰

32. In the *NPRM*, we propose to amend the amateur service rules to allow amateur radio operators to use technologies that stations in other services are allowed to use and to make it easier for former amateur service licensees to re-enter the amateur service. Because “small entities,” as defined in the RFA, are not persons eligible for licensing in the amateur service, these proposed rules do not apply to “small entities.” Rather, they apply exclusively to individuals who are the control operators of amateur radio stations.⁷¹ Therefore, we certify that the proposals in this *NPRM*, if adopted, will not have a significant economic impact on a 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.⁷² This initial certification will also be published in the Federal Register.⁷³

⁶⁶ 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).

⁶⁷ See 5 U.S.C. § 605(b).

⁶⁸ See 5 U.S.C. § 601(6).

⁶⁹ 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.”

⁷⁰ See 15 U.S.C. § 632.

⁷¹ See 47 C.F.R. § 97.3(a)(1).

⁷² See 5 U.S.C. § 605(b).

33. *Paperwork Reduction Analysis.* This *NPRM* contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13.

34. *Ex Parte Presentations.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

35. *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> or call the Consumer and Government Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This *NPRM and Order* also may be downloaded from the Commission’s web site at <<http://www.fcc.gov/>>.

36. *Comment Dates.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. 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.

(Continued from previous page) _____

⁷³ See *id.*

⁷⁴ 47 C.F.R. §§ 1.1200 *et seq.*

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

37. For further information, contact William T. Cross, Mobility Division, Wireless Telecommunications Bureau, by telephone at (202) 418-0620, TTY at (202) 418-7233, or e-mail at William.Cross@fcc.gov.

V. ORDERING CLAUSES

38. 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), this *Notice of Proposed Rule Making* IS ADOPTED, and 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 COMMENT IS SOUGHT on this proposal as set forth in the Appendix.

39. 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-11625, submitted by the American Radio Relay League, Inc., on March 15, 2011 IS GRANTED to the extent indicated herein.

40. 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-11629, submitted by the Anchorage Volunteer Examiner Coordinator on April 15, 2011 IS GRANTED to the extent indicated herein.

41. IT IS FURTHER ORDERED that, pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, the Request for Temporary Waiver submitted by the American Radio Relay League, Inc., on March 15, 2011, IS DENIED.

42. 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*, 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
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

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 is amended by revising paragraph (c)(5) to read as follows:

§ 97.3 Definitions.

* * * * *

(c) * * *

(5) Phone. Speech and other sound emissions having designators with A, C, D, F, G, H, J or R as the first symbol; 1, 2, 3, or X as the second symbol; E as the third symbol. Also speech emissions having B as the first symbol; 7, 8 or 9 as the second symbol; E as the third symbol. MCW for the purpose of performing the station identification procedure, or for providing telegraphy practice interspersed with speech. Incidental tones for the purpose of selective calling or alerting or to control the level of a demodulated signal may also be considered phone.

* * * * *

3. Section 97.19 is amended by revising paragraphs (c)(1)-(3) to read as follows:

§ 97.19 Application for a vanity call sign.

* * * * *

(c) * * *

(1) A call sign shown on an expired license grant is not available to the vanity call sign system for 180 days following the expiration of the license.

(2) A call sign shown on a surrendered or canceled license grant (except for a license grant that is canceled pursuant to §97.31) is not available to the vanity call sign system for 180 days following the date such action is taken. (The availability of a call sign shown on a license canceled pursuant to §97.31 is governed by paragraph (c)(3) of this section.)

(i) This 180 day period does not apply to any license grant pursuant to paragraph (c)(3)(i), (ii), or (iii) of this section that is surrendered, canceled, revoked, voided, or set aside because the grantee acknowledged or the Commission determined that the grantee was not eligible for the exception. In such a case, the call sign is not available to the vanity call sign system for 30 days following the date such action is taken, or for the period for which the call sign would not have been available to the vanity call

sign system pursuant to paragraphs (c)(2) or (3) of this section but for the intervening grant to the ineligible applicant, whichever is later.

(ii) An applicant to whose operator/primary station license grant, or club station license grant for which the applicant is the trustee, the call sign was previously assigned is exempt from the 180 day period set forth in paragraph (c)(2) of this section.

(3) A call sign shown on a license canceled pursuant to §97.31 of this part is not available to the vanity call sign system for 180 days following the person's death, or for 180 days following the expiration of the license grant, whichever is sooner. If, however, a license is canceled more than 150 days after the licensee's death, the call sign is not available to the vanity call sign system for 30 days following the date such action is taken. The following applicants are exempt from this 180 day period:

* * * * *

4. Section 97.21 is amended by revising paragraph (b) to read as follows:

§ 97.21 Application for a modified or renewed license grant.

* * * * *

(b) A person whose amateur station license grant has expired may apply to the FCC for renewal of the license grant for another term during a 180-day filing grace period. The application must be received at the address specified above prior to the end of the grace period. Unless and until the license grant is renewed, no privileges in this part are conferred.

* * * * *

5. Section 97.307 is amended by revising paragraphs (f)(8) and (f)(10) to read as follows:

§ 97.307 Emission standards.

* * * * *

(f) * * *

(8) A RTTY or data emission having designators with A, B, C, D, E, F, G, H, J or R as the first symbol; 1, 2, 7, 9 or X as the second symbol; and D or W as the third symbol is also authorized.

* * *

(10) A station having a control operator holding a Novice Class operator license or a Technician Class operator license may only transmit a CW emission using the international Morse code or phone emissions J3E and R3E.

* * * * *

6. Section 97.505 is amended to read as follows:

§ 97.505 Element credit.

The administering VEs must give credit as specified below to an examinee holding any of the following license grants or license documents:

(a) An unexpired or expired FCC-granted Amateur Extra Class operator license grant: Elements 2, 3, and 4.

(b) An unexpired or expired FCC-granted Advanced Class or General Class operator license grant: Elements 2 and 3.

(c) An unexpired or expired FCC-granted Technician Class or Technician Plus operator license document: Element 2.

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

(e) A CSCE: Each element the CSCE indicates the examinee passed within the previous 365 days.

7. Section 97.507 is amended by removing paragraph (d) and revising paragraphs (a), (a)(2), 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) * * *

(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.

8. Section 97.509 is amended by removing and reserving paragraph (g), and revising paragraphs (a), (f), and (i) to read as follows:

§ 97.509 Administering VE requirements.

(a) Each examination for an amateur operator license must be administered by a team of at least 2 VEs at an examination session coordinated by a VEC. The number of examinees at the session may be limited.

* * * * *

(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.

(g) [Reserved]

* * * * *

(i) When the examinee is credited for all examination elements required for the operator license sought, 2 VEs must certify that the examinee is qualified for the license grant and that the VEs have complied with these administering VE requirements. The certifying VEs are jointly and individually accountable for the proper administration of each examination element reported. The certifying VEs may delegate to other qualified VEs their authority, but not their accountability, to administer individual elements of an examination.

* * * * *