ORIGINAL

DOCKET FILE COPY ORIGINAL

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

RECEIVED

SEP 23 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Sections 97.505	)	RM-_____
and 97.509 of the Rules	)	
Governing the Administration	)	
of Telegraphy Examinations in	)	
the Amateur Radio Service	)	

To: The Commission

PETITION FOR RULE MAKING

The American Radio Relay
League, Incorporated

Christopher D. Imlay
BOOTH, FRERET, IMLAY & TEPPER, P.C.
5101 Wisconsin Avenue, N.W.
Suite 307
Washington, D.C. 20016

September 23, 1997

No. of Copies rec'd 0+4
List ABCDE

TABLE OF CONTENTS

		Page
Summary	. . . . .	i
I.	Introduction and Background	2
II.	There is Statistical Evidence of Significant Abuse of Process	3
III.	The Proposed Rule Changes Are Consistent With The Commission's Plan For Making Amateur Radio Available To Those With Severe Handicaps	6
IV.	Conclusions	12

SUMMARY

The American Radio Relay League, Incorporated (the League), the national association of amateur radio operators in the United States, by counsel, requests that the Commission issue a Notice of Proposed Rule Making, looking toward the amendment of Sections 97.505 and 97.509 of the Commission's rules (47 C.F.R. §§97.505, 97.509) with respect to the administration of telegraphy examinations by Volunteer Examiners (VEs) to severely handicapped persons. Specifically, the League requests the modification of procedural requirements to be utilized by VEs in establishing that a severely handicapped person is unable to pass a 13 or 20 word-per-minute (wpm) telegraphy examination, prior to granting examination credit for those telegraphy requirements. The candidate would be required to at least attempt the examination, with any and all necessary accommodations, prior to being granted the telegraphy examination waiver pursuant to a physician's certification. Furthermore, the Volunteer Examiner Coordinators (VECs) would be entitled to request medical information pertaining to the applicant's handicap from the certifying physician.

The League believes it necessary to make these two rather minor changes in the procedures for telegraphy examination waivers, so as to reserve the process for those severely handicapped individuals for whom the process was intended in the first place, and who deserve the substantive accommodation. The proposed changes are not an unreasonable burden on any examinee, and are intended to stem abuses of the Commission's procedures without any disaccommodation for handicapped individuals.

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

In the Matter of	)	
	)	
Amendment of Sections 97.505	)	**RM-_____**
and 97.509 of the Rules	)	
Governing the Administration	)	
of Telegraphy Examinations in	)	
the Amateur Radio Service	)	

To: The Commission

PETITION FOR RULE MAKING

The American Radio Relay League, Incorporated (the League), the national association of amateur radio operators in the United States, by counsel and pursuant to Section 1.401 of the Commission's Rules, hereby respectfully Requests that the Commission issue a Notice of Proposed Rule Making at an early date, looking toward the amendment of Sections 97.505 and 97.509 of the Commission's rules (47 C.F.R. §§97.505, 97.509) with respect to the administration of telegraphy examinations by Volunteer Examiners (VEs) to severely handicapped persons. Specifically, the League requests the modification of procedural requirements to be utilized by VEs in establishing that a severely handicapped person is unable to pass a 13 or 20 word-per-minute (wpm) telegraphy examination, prior to granting examination credit for those telegraphy requirements. The candidate would be required to at least attempt the examination, with any and all necessary accommodations, prior to being granted the telegraphy examination exemption pursuant to

a physician's certification. Furthermore, the Volunteer Examiner Coordinators (VECs) would be entitled to request medical information pertaining to the applicant's handicap from the certifying physician. The rule changes requested are set forth in the attached Appendix. As good cause therefor, the League states as follows:

I. Introduction and Background

1. The ARRL-VEC, the VEC which is responsible for the administration of approximately two-thirds of all amateur radio examinations in the United States, is the recipient of numerous, regular complaints of abuse of the Commission's policies governing administration of telegraphy examinations for higher class amateur licenses to persons who have severe handicaps. The Commission's current policy, embodied in Section 97.505(a)(10) of the Rules, is to require VEs to accept a statement of a physician[1] on an FCC form 610, in lieu of administration of a 13 or 20 wpm examination element to a candidate for a higher class amateur radio license.[2] The statement certifies that, because the person is an individual with a severe handicap, the duration of which will extend for more than 365 days beyond the date of the certification, the person is

---

[1] Specifically, the certifications are to be issued by a Medical Doctor (M.D.) or a Doctor of Osteopathy (D.O).

[2] Consistent with the requirements of the ITU Radio Regulations, there is no provision for waiver of the 5 wpm telegraphy requirement for those radio amateurs desiring to operate on the high-frequency bands. This is not a barrier to entry to the Amateur Service, however, due to the availability of the Technician Class amateur license, which does not require a demonstration of proficiency in sending or receiving telegraphy.

unable to pass a 13 or 20 wpm telegraphy examination. The candidate must also sign a release permitting the disclosure *to the FCC* of medical information pertaining to the person's handicap.[3]

2. The certification, and information provided to physicians asked by an amateur radio examination candidate to certify to a severe disability, is included in the FCC Form 610. A copy of that portion of the form is attached hereto as **Exhibit A**. The difficulty with this process, given seven years of experience with it, is that it is and has been subject to numerous instances of apparent abuse. Whether due to lack of familiarity with the telegraphy examination process and the Amateur Service; the difficulty of correlating a diagnosis to the function of a cognitive skill; or merely an attempt by a physician to accommodate a patient's request for a favor on a matter which is of no commercial import, it is nonetheless the League's experience, in the seven years that the telegraphy waiver rules have been in place, that large numbers of individuals without severe handicaps have obtained physicians' certifications of inability to pass the telegraphy examination, and have abused the process.

II. There is Statistical Evidence of Significant Abuse of Process

3. The ARRL-VEC administered 26,665 examination elements in 1996, in 6,098 examination sessions. At 5,674 of those sessions, there were license upgrade elements administered. From an analysis of the records of the ARRL-VEC, approximately 8 percent of license

[3] See, Section 97.505(a)(10)(i) and (ii).

upgrades involving telegraphy examinations involve a medical exemption from the higher speed telegraphy requirement. According to information received, the other large VEC has had similar experience with license upgrades. It is not possible at this point to quantify how many of this rather large number of exemptions involve applicants who are not, in fact, in need of such. It is readily apparent, however, that the number of exemptions exceeds, by what the League believes to be a wide margin, the number of radio amateurs who actually require a substantive exemption (rather than the current, exceptionally indulgent procedural accommodations available) to overcome a severe handicap. While the other side of the coin is that 92 percent of upgrades having a telegraphy requirement do not involve a medical exemption, and thus it would be unfair to describe abuses as pandemic, it appears that each year, the number of licensees who upgrade their license class using a medical exemption for the telegraphy element number in the hundreds, and there is no evidence that the number is declining. Instead, it is reasonable to assume that, as the number of amateurs who have used the exemption to upgrade grows, the number willing to follow the example of those who have taken an undeserved shortcut will also grow.[4]

---

[4] The circumstances are very much contrary to the Commission's efforts to date to avoid abuses. In November of 1993, the physician's section of the FCC Form 610 was revised to include a notice that makes it quite clear to the reader that accommodative procedures are available to anyone who might need them in order to take a telegraphy examination. It describes how a physician should decide whether a patient is in need of an exemption (See **Exhibit A**, attached). At the time it was introduced in 1993, the new explanation was seen as a step in the right direction to stem

4. Worse yet, due to anecdotal examples of abuses, there is a growing suspicion in the amateur community of anyone who has availed himself or herself of the medical exemption: a general suspicion that the exemption was undeserved. The telegraphy exemption requirement was intended to accommodate only those few individuals who require such a *substantive* accommodation. The attitude of some licensed amateurs who have put forth the effort to upgrade by examination, and who have some personal experience with abuses of the medical exemption, is to view those who have used the exemption procedure as "suspect". This is completely unfair to those severely handicapped amateurs who require and deserve the exemption because they cannot be accommodated by procedural means. The League cannot for one moment tolerate a process that causes severely handicapped persons to feel as though they are in any sense members of a "second class". On the other hand, neither can it abide abuses of the VE program, which in other respects works extremely well. The answer to both problems, and in order to avoid disenfranchising the handicapped amateurs who require the exemption, is simply to place additional, minor safeguards into the exemption process.

---

abuses of the medical exemption provision. However, with the introduction of this statement, the Commission seemed no longer interested in contacting a physician who had executed an exemption certification which had been called into question by VEs who doubted the necessity of the exemption. The theory appears to be that, since the physician has certified in writing that he or she has read the notice, the Commission may, and can, assume that the physician has done so and has understood what he or she has read. The reality appears to be quite different.

5. The modified rules requested herein are intended, first, to accommodate, *fully and completely,* those who, due to severe, long-term handicaps, really cannot master the ability to receive 13 wpm or 20 wpm telegraphy; and second, at least minimally, to discourage those who would abuse the procedure simply to avoid the effort required to develop and demonstrate a higher level of telegraphy skill.

III. The Proposed Rule Changes Are Consistent With The Commission's Plan For Making Amateur Radio Available To Those With Severe Handicaps

6. The telegraphy exemption provisions of Section 97.505(a)(10) were established by the *Report and Order*, 5 FCC Rcd. 7626 (1990) in Docket 90-356. That Report and Order was based on a Notice of Proposed Rule Making by which the Commission, on its own motion, attempted to "make the Amateur Service more accessible to persons with severe handicaps." The Commission felt that acceptance by VEs of physician's certifications was a more efficient and effective means of accomplishing the goal than would case-by-case waivers granted by the Commission. Prior to the telegraphy examination exemption, VEs were required to, and did, make any and all necessary *procedural* accommodations to insure that any handicapped individual was allowed to demonstrate proficiency in receiving telegraphy in a way that neutralized, or at least minimized, the particular disability.[5] Surely enough, there are

[5] There was a very substantial shift in the accommodative procdures for handicapped examination candidates implemented by the VECs at the written instruction of the Commission. The Commission, prior to mid-1990, permitted handicapped applicants to upgrade

those with certain cognitive disabilities who could not, despite even the most liberal procedural accommodations, acquire proficiency in higher-speed telegraphy, and there is a need to accommodate those few individuals by substantive means, such as the physician's certification and exemption.

7. Each of the three classes of telegraphy examination requires examinees to prove that they can send and receive texts in Morse code. However, Section 97.509(g) obviates the need for VEs to conduct a sending test, on the basis that a receiving test alone is adequate proof of an examinee's ability to both send and receive

---

their license class by asking the volunteer examiners (VEs) to provide for their special needs without compromising the substance of the examination. For example, an applicant who was hearing-impaired could request that the code be sent via flashing light or a vibrating surface, but the speed and accuracy requirements were not diminished.

Those limited accommodative procedures did not meet the needs of every applicant. In the summer of 1990, the Commission announced a new policy that was to be in effect while permanent rules concerning waivers and accommodations were developed. The procedural accommodations were vastly modified, so as to give the volunteer examiners more options for accommodation of handicapped applicants. These included pausing the code message after sentences, words, or even letters, while the applicant determined what had been copied, or to substitute a sending test for the receiving test. As stated in the Notice of Proposed Rule Making in Docket 90-356, 5 FCC Rcd. 4889 (1990), at footnote 4:

> The special procedures now include, as warranted, suitable pauses in sending the message after each sentence, each phrase, each word, or even each character to allow the examinee additional time to absorb and interpret what was sent. Where warranted, a sending test is substituted for a receiving test...

It is obvious that, given the range of procedural accommodations available, even severely handicapped individuals should be able to take and pass an examination. There is, however, as discussed herein, a tendency for applicants to seek exemptions instead.

telegraphy. For handicapped examinees, accommodative procedures in administering any telegraphy examination can include travelling to the examinee's home to administer the examinations; use of flashing lights or vibrating pads for hearing disabled individuals; insertion of suitable pauses in sending the telegraphy text message after each sentence, each phrase, each word, or each character to allow the examinee additional time to absorb and interpret what is sent; or substitution of sending tests for receiving tests. These procedures accommodate the majority of disabilities that might act as an obstacle to the successful completion of a higher-speed telegraphy examination by a handicapped person.

8. The comments in Docket 90-356 were very much in favor of making procedural accommodations for those severely handicapped individuals who could not pass the required examinations otherwise, and even supported the *substantive* accommodation of affording them credit for the examinations not taken, if that was the level of accommodation necessary. The problem in that proceeding as perceived by the commenters, and by the Commission, was the means of separating those who could take the examination and pass, and

those could not, despite procedural accommodations.[6] As the Commission put it:

> Many of these commenters (in Docket 90-356), however, have misgivings about the possibility of abuse by persons desiring higher operator class privileges but who simply want to avoid the effort required to develop a higher level of skill in the Morse code.
>
> *Report and Order*, 5 FCC Rcd. at 7626.

The Commission chose ultimately to rely for this purpose only on the physician's certification, and the VEs and VECs were placed in the position of being precluded from second-guessing a physician's certification, no matter what other information is in the possession of the VEs or VECs who are required to give full faith and credit to the certification. While the Commission, pursuant to Section 97.505(a)(10)(ii) of the Rules, may make use of the medical information release called for where physician's certification exemptions are utilized, it has not, in the League's experience, used that authority or examined medical records of the patient.

---

[6] The Commission considered a list of disabilities that could meet the definition contained in the Rehabilitation Act of 1973 of "severely handicapped individual". Commenters overwhelmingly objected to that list, as being overly broad. Commenters suggested that there should be created a review board of physicians who are radio amateurs to advise the Commission in specific cases. The Commission rejected that proposal, however, as being administratively cumbersome. It chose instead to rely on the "integrity and the judgment of the physician who signs the certification to establish, after consulting with the patient, that the person is severely handicapped and because of the disability is unable to pass the telegraphy examination." The Commission stated that it expected the physician to execute the certification only in "worthy" cases.

9. The Commission stated, in its Report and Order in Docket 90-356, that it supported the desire of any handicapped person to seek the challenge of the telegraphy examination:

> A prevalent misconception in the comments is that all severely handicapped individuals will be required to apply for exemption from the telegraphy examinations and will be denied the opportunity to take the higher speed examinations. We emphasize that the VEs must not turn away any applicant who wants to take the telegraphy examinations. We believe that this policy responds to critics who state that severely handicapped persons are insulted by the proposed exemption procedures. We are very supportive of the desire of any handicapped person who seeks the challenge of the telegraphy examination.

Report and Order, 5 FCC Rcd. at 7627.

10. The League's proposal herein, consistent with the foregoing, is to add two requirements to the Section 97.505(a)(10) provisions for telegraphy exemption certifications. First, an applicant would have to actually attempt a telegraphy examination (incorporating any and all necessary procedural accommodations by the VE team administering the examination to accommodate the handicap of the particular examinee), before being granted the exemption based on the physician's certification. Second, the VECs (not the VEs) on behalf of the Commission, would be authorized and required to request medical information pertaining to the applicant's handicap from the certifying physician. The VEC would be required to withhold processing of the Form 610 until the information is received by that VEC. The process would be that the VEC, upon receipt of the Form 610 for an applicant with a physician's exemption, would then request directly from the certifying physician, the medical information, and would hold that

Form 610 pending receipt of it. Upon review thereof, the VEC would forward the grant information to the Commission for processing and license issuance.

11. This process would, without significantly inconveniencing handicapped individuals, further insure the integrity of the process, while providing a "check and balance" system which would function as a disincentive to those who might otherwise abuse the process. The candidate will have to at least make an attempt to demonstrate proficiency in the higher class telegraphy examination, with whatever procedural accommodations are necessary to enable the attempt to have a reasonable chance of success. As has always been the case, no one will be turned away: VE teams will always make all necessary *procedural* arrangements to accommodate handicapped persons. As to the medical information, the VECs, which currently evaluate FCC Form 610 submissions rather than the Commission, should be the entities receiving medical information pursuant to which the applicant justifies the need for the telegraphy exemption. The Commission has the authority to obtain this information at the present time; the VECs, which perform the review function relative to the Forms 610 in general, should be the recipient of the information, and if there appears a significant discrepancy between the medical information received and the exemption, the VEC can bring the matter to the attention of the Enforcement Division of the Wireless Telecommunications Bureau. It is believed, however, that the changes in the procedure will themselves have the necessary deterrent effect on those who might

abuse the process, and better limit the use of the exemptions to those who deserve it and who should have it.

IV. Conclusions

12. There are numerous dynamic factors in the physician/patient relationship, and physicians are often called upon by patients for relatively minor medical documentation that perhaps, from time to time, is not taken overly seriously by medical professionals, depending on the context. Physicians are often extremely busy about their primary, important obligations as health care providers. These realities, and the fact that a physician might not view a certification on a matter such as a telegraphy exemption as particularly important, when not directly related to the health care of the patient, makes it easy to understand how the current situation has developed. The League believes it necessary to make these two rather minor changes in the procedures for telegraphy examination exemptions, so as to reserve the process for those severely handicapped individuals for whom the process was intended in the first place, and who deserve the exemption.

13. The proposed changes are not an unreasonable burden on any examinee, and are intended to stem abuses of the Commission's procedures without any disaccommodation for handicapped individuals. There is, in any case, no inconsistency between the relief requested herein and the Americans With Disabilities Act (ADA), Pub.L. No. 101-336, 104 Stat. 327 (1990), because the

provisions of that legislation do not apply to Amateur Service communications.[7]

Therefore, the foregoing considered, the American Radio Relay League, Incorporated respectfully requests that the Commission issue a Notice of Proposed Rule Making at an early date proposing the modifications to the Amateur Radio Service rules requested herein, and as specified in the attached Appendix.

---

[7] See, the *Memorandum Opinion and Order*, 6 FCC Rcd. 5083, 5084, fn. 14 (1991); *Lionidas R. Moten*, 8 FCC Rcd. 4427 (1993). The ADA does not apply to amateur service communications; the only services in the telecommunications portions of that Act relate to common carrier and broadcast licensees.

Respectfully submitted,

THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED

225 Main Street
Newington, CT 06111

By _____
Christopher D. Imlay
Its General Counsel

BOOTH, FRERET, IMLAY & TEPPER, P.C.
5101 Wisconsin Avenue, N.W.
Suite 307
Washington, D. C. 20016
(202) 686-9600

September 23, 1997

APPENDIX

1. Section 97.505(a)(10) is amended to read as follows:

(10) An unexpired (or expired but within the grace period for renewal) FCC-granted Novice, Technician Plus (including a Technician Class operator license granted before February 14, 1991), General, or Advanced Class operator license document, and an FCC Form 610 containing:

(i) A physician's certification stating that the applicant is unable to pass a 13 or 20 word-per-minute telegraphy examination because of a severe handicap. The duration of the handicap must be certified to extend for more than 365 days beyond the date of the application. Evidence must also be presented to the VE team that the applicant has taken and attempted to pass an examination administered in accordance with the requirements of Section 97.509(k) of this Part; and

(ii) A release signed by the applicant authorizing and requesting release to the VEC and the FCC from the certifying physician of medical information pertaining to the person's handicap, for review by the VEC prior to processing the Form 610 of that applicant: Element 1(C). Pursuant to that release, the sponsoring VEC shall, upon receipt of the Form 610 containing a physician's certification, request from the certifying physician medical information about the patient which substantiates the certification.

2. Section 97.509(k) will be amended to read as follows:

(k) The administering VEs must accommodate an examinee whose physical disabilities require a special examination procedure. The VEs may require a physician's certification indicating the nature of the disability before determining which, if any, special procedures must be used. If an applicant claims entitlement to the provisions of Section 97.505(a)(10) of this Part, the VEs shall accommodate an attempt by that person to pass elements 1(B) and/or 1(C) prior to acceptance of the physician's certification in lieu thereof.

ATTACH ORIGINAL OR A PHOTOCOPY OF YOUR LICENSE HERE:

SECTION 3 - TO BE COMPLETED BY PHYSICIAN

PHYSICIAN'S CERTIFICATION OF DISABILITY

Please see notice below

Print, type, or stamp physician's name: _____

Street address: _____

City, State, ZIP code: _____

Office telephone number: ( ) _____

I CERTIFY THAT I have read the Notice to Physician Certifying to a Disability, and that the person named in Item 1 on the reverse is severely handicapped, the duration of which will extend for more than 365 days beyond this date. Because of this severe handicap, this person is unable to pass a 13 or 20 words per minute telegraphy examination. I am licensed to practice in the United States or its Territories as a doctor of medicine (M.D.) or doctor of osteopathy (D.O.). I have considered the accommodations that could be made for this person's disability and have determined that, even with accommodations, this person would be unable to pass a 13 or 20 words per minute telegraphy examination.

WILLFUL FALSE STATEMENT IS PUNISHABLE BY FINE AND IMPRISONMENT (U.S. CODE TITLE 18, SECTION 1001)

➤ _____ _____ _____

PHYSICIAN'S SIGNATURE (DO NOT PRINT, TYPE, OR STAMP) M.D. or D.O. DATE SIGNED

PATIENT'S RELEASE

Authorization is hereby given to the physician named above, who participated in my care, to release to the Federal Communications Commission any medical information deemed necessary to process my application for an amateur operator/primary station license.

➤ _____ _____

APPLICANT'S SIGNATURE (DO NOT PRINT, TYPE, OR STAMP) DATE SIGNED

NOTICE TO PHYSICIAN CERTIFYING TO A DISABILITY

You are being asked by a person who has already passed a 5 words per minute telegraphy examination to certify that, because of a severe handicap, he/she is unable to pass a 13 or 20 words per minute telegraphy examination. If you sign the certification, the person will be exempt from the examination. Before you sign the certification, please consider the following:

THE REASON FOR THE EXAMINATION - Telegraphy is a method of electrical communication that the Amateur Radio Service community strongly desires to preserve. We support their objective by authorizing additional operating privileges to amateur operators who increase their skill to 13 and 20 words per minute. Normally, to attain these levels of skill, intense practice is required. Annually, thousands of amateur operators prove by passing examinations that they have acquired the skill. These examinations are prepared and administered by amateur operators in the local community who volunteer their time and effort.

THE EXAMINATION PROCEDURE - The volunteer examiners (VEs) send a short message in the Morse code. The examinee must decipher a series of audible dots and dashes into 43 different alphabetic, numeric and punctuation characters used in the message. To pass, the examinee must correctly answer questions about the content of the message. Usually, a fill-in-the-blanks format is used. With your certification, they will give the person credit for passing the examination, even though they do not administer it.

MUST A PERSON WITH A HANDICAP SEEK EXEMPTION?

No handicapped person is required to request exemption from the higher speed telegraphy examinations, nor is anyone denied the opportunity to take the examinations because of a handicap. There is available to all otherwise qualified persons, handicapped or not, the Technician Class operator license that does not require passing a telegraphy examination. Because of international regulations, however, any handicapped applicant requesting exemption from the 13 or 20 words per minute examination must have passed the 5 words per minute examination.

ACCOMMODATING A HANDICAPPED PERSON - Many handicapped persons accept and benefit from the personal challenge of passing the examination in spite of their hardships. For handicapped persons without an exemption who have difficulty in proving that they can decipher messages sent in the Morse code, the VEs make exceptionally accommodative arrangements. They will adjust the tone in frequency and volume to suit the examinee. They will administer the examination at a place convenient and comfortable to the examinee, even at bedside. For a deaf person, they will send the dots and dashes to a vibrating surface or flashing light. They will write the examinee's dictation. Where warranted, they will pause in sending the message after each sentence, each phrase, each word, or each character to allow the examinee additional time to absorb and interpret what was sent. They will even allow the examinee to send the message, rather than receive it.

YOUR DECISION - The VEs rely upon you to make the necessary medical determination for them using your professional judgement. You are being asked to decide if the person's handicap is so severe that he/she cannot pass the examination even when the VEs employ their accommodative procedures. The impairment, moreover, will last more than one year. This procedure is not intended to exempt a person who simply wants to avoid expending the effort necessary to acquire greater skill in telegraphy. The person requesting that you sign the certification will give you names and addresses of VEs and other amateur operators in your community who can provide you with more information on this matter.

DETAILED INSTRUCTIONS - If you decide to execute the certification, you should complete and sign the Physician's Certification of Disability on the person's FCC Form 610. You must be an M.D. or D.O. licensed to practice in the United States or its Territories. The person must sign a release permitting disclosure to the FCC of the medical information pertaining to the disability.