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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Sections 97.505) RM-9196
and 97.509 of the Rules)
Governing the Administration)
of Telegraphy Examinations in)
the Amateur Radio Service)

To: The Commission

REPLY COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED

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 1.405 of the Commission's Rules, hereby respectfully submits its reply to the comments filed in response to the League's above-captioned Petition for Rule Making, filed September 23, 1997. These reply comments are timely, per the Commission's Public Notice, Report No. 2239, released November 26, 1997. The League's Petition seeks 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. In response to the comments filed to date, the League states as follows:

1. The comments in response to the Petition were mixed, and fell into three general categories. Some commenters supported the proposal, citing instances of abuse of the physician's certification process for granting exemptions of the higher-speed

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Morse telegraphy examination elements. Others opposed the obtaining by VECs of medical records from the certifying physician, claiming that the VECs are not capable of "second-guessing" a physician's medical evaluation, and that such a process would violate a handicapped person's "right to privacy". A third group calls for the abolition of the Elements 1B and 1C Morse telegraphy requirements entirely (which, they argue, would moot the exemption abuse problem). These reply comments will address the last issue first.

2. The comments of The W5YI Group, Inc. and a commenter identifying itself as "No-code International" do not deny that there are instances of abuse of the telegraphy examination exemption procedures. They argue, however, that abuses or violations of the Commission's rules should be addressed by eliminating the rules that are being violated, rather than attempting to find a solution for the abuses. Their arguments, however, miss completely the point of the League's Petition. The League's Petition is aimed at enforcement of rules already in place. If the two petitioners feel strongly, for whatever reason, that the higher-speed telegraphy examination elements should be eliminated or reduced, then they are entitled themselves to request that relief in a separate petition. The instant proceeding, however, addresses only abuses of the Commission's examination regulations, the proper means of addressing those abuses, and the far more narrow issue of how to obtain some reasonable balance between substantive accommodation for severely handicapped radio

amateurs who wish to upgrade their license class (and for whom procedural accommodations are insufficient to allow them to pass the telegraphy examination). The issue is the protection of the integrity of the examination process against those who are increasingly abusing it. The abuses, which the League has documented on a statistical basis, are readily apparent, and the League, which administers approximately 65 percent of all amateur examinations, is in a good, and almost unique position to identify the problem, based on that statistical evidence.¹

3. Some comments variously refer to the proposed rule amendments in the League's Petition as "discriminatory" relative to persons with severe handicaps, or an "invasion of the privacy" of those persons who seek and obtain telegraphy exemptions based on a severe handicap. Nothing could be further from the truth, and those who make such allegations misunderstand the nature of the current

¹ Indeed, that is the only basis on which any problem with physician's certifications on telegraphy exemptions can be determined. The VECs and VEs are prohibited by current Commission policy from conducting any substantive review of a physician's certification, and the Commission, which currently has the authority to obtain the certifying physician's medical records, has categorically refused to obtain them. Since there is no effective enforcement by the Commission in the Amateur Service at present anyway, the abuses of the physician's exemption process are virtually certain to go unpunished. Indeed, even in instances in which evidence is submitted to the Enforcement Division of the Wireless Telecommunications Bureau (WTB) that physician's certifications are not based on any actual medical condition, there is no investigation by the Commission of the physician's certification, or even a request for the medical records of the exemption recipient. In a recent instance in which a fraudulent certification was brought to the attention of the Bureau's Enforcement Division, the matter was referred by the Commission's staff back to the VE who brought it to the Commission's attention in the first place. The Commission claimed that it was not in a position to second-guess the physician.

rules, and the relief requested in the petition. The purpose of the League's petition is to stem abuses of the physician's certification process so that (1) it is reserved, as intended, for those who actually require it, and thus unavailable to those who do not; and (2) those severely handicapped persons who require an exemption, as opposed to a procedural accommodation in the administration of the examination, are not ostracized by their peers as the result of the perception (widely held at present) that the exemption process is being severely abused. There is no discrimination under any circumstances: the League intends that severely handicapped persons who, due to their handicap, cannot pass a 13 or 20 word-per-minute telegraphy examination be given the exemption with a minimum of delay or bureaucracy. Nothing in the Petition provides otherwise. However, for those who avail themselves of the exemption, it is not much to ask that they be willing to have disclosed to the VEC under whose auspices the examination is administered, at least the portion of their medical record that establishes that the recipient of the exemption in fact has a severe disability that bears some correlation to the physician's certification. There is no real change from the current circumstances: the person seeking the exemption has to release his or her medical records to the Commission under the current rules. Release of that information to the VEC, which is the entity that reviews Forms 610, is no different. Nor is it much to ask that the severely handicapped person, prior to utilizing the physician's certification, at least attempt to take and pass the examination

element from which he or she might otherwise be exempted, provided that any and all procedural accommodations necessary for the examination candidate's handicap are in fact afforded, as the rules require, by the VE teams. In some cases, a good-faith attempt to pass the examination element would not even necessitate that the candidate leave his or her residence.

4. As to the suggestion that it is "discriminatory" to require either the submission of medical records in support of an exemption request, or to require an attempt at passing the examination element prior to crediting the physician's certification, neither requirement is any more discriminatory than is the physician's certification. There must in any case be a demonstration of the presence of a severe handicap required to establish entitlement to the exemption. The physician's certification has been shown to be an ineffective eligibility filter. No one is suggesting that severely handicapped persons not be accommodated, or that inordinate burdens be placed on them in order to obtain the deserved exemption. All that is being requested is a requirement that the entitlement be established by more than a physician's certification that is quite obviously inadequate. Nor is the disclosure of medical information to the VECs an "invasion of privacy". The same information must be provided, upon request, to the Commission now. The VECs, however, and not the Commission, are the entities that screen examinations and Forms 610. The Commission, as a practical matter, does not ask for information to verify the presence of a condition which correlates to the

physician's certification, even when confronted with evidence of abuse in particular cases. The Commission, therefore, should not be the only entity that has such authority. That authority is more properly placed with the VECs, which can review the information, and report abuses to the Commission for enforcement action.

5. Some commenters argued that the VECs should not be allowed to second-guess the physician. If the concern is that the VECs will attempt their own diagnosis of a person's handicap, that would be a reasonable concern. However, the function of the VEC in obtaining and reviewing medical record information is not to cause the VEC to have to second-guess the physician's diagnosis. The League's intention is that, with the Form 610 containing a physician's certification, there should also be provided by the exemption applicant those portions of the applicant's medical record which establish that the certifying physician has at least been consulted by the patient concerning the alleged condition that led to the physician's certification. If on the face of the medical record, there is no apparent correlation between the medical record and the physician's certification, there is reason to doubt the validity of the claimed exemption. All that would be established by the review is that the patient's medical record included information that indicates the presence of a severe handicap which could support the physician's certification. As stated in the League's Petition, this process alone should be sufficient to preclude most abuses.

6. The comments were essentially unanimous in acknowledging that there is a significant problem with abuse of the exemption

process. Noteworthy were the comments of Dr. Mary K. Favaro, M.D., a licensed amateur and a VE for the past 3 years. Dr. Favaro has personally witnessed individuals requesting and obtaining exemptions based upon fraudulent claims, including a fellow physician who claims to be "learning disabled" and thus entitled to exemption. Dr. Favaro notes that the medical amateur radio group, MARCO, continues to offer its assistance in reviewing decisions concerning the validity of the exemption requests. The comments of the Western Carolina Amateur Radio Society VEC, Inc., though aimed at simplifying the physician's certification, note that the abuse problem is acute:

It is quite unfortunate, but we believe that more than 90% of the code speed waivers we see coming through are in fact abuses of the program by those unwilling to expend the effort to actually learn what they legitimately should know to pass the test in the first place, namely enough practice as actually operating via Morse code. Instead they plead their case at their physician's office, all too often with complete success.

WCARS VEC, Inc. Comments, at 5.

The comments of the W5YI Group, though oriented toward restructuring of the amateur radio license classes, grudgingly admit that there are abuses of the exemption process:

While the number of requests for telegraphy waivers has been increasing in recent years, we believe that the greater majority of Morse code waivers are legitimate. Some of our VE teams believe, however, that several may be fraudulent.

W5YI Group Comments, at 7.

7. The current situation is not acceptable: there is strong statistical evidence that large numbers of individuals who do not suffer from a severe handicap necessitating an exemption from

examination elements 1B and 1C are in fact obtaining them from their physicians. The League does not argue that the physician's certification language on the Form 610 is unclear, or that the procedure should not be available for those few individuals who require a substantive exemption rather than the extensive procedural accommodations now provided by the VEs to all handicapped examinees. What is apparent, however, is that (1) there are many who abuse the process; (2) the VEs and VECs are prohibited by Commission instructions from questioning the physician's certification; (3) where evidence is provided to the Commission in particular cases that a particular examinee is not entitled to the exemption, the Commission itself refuses to question the physician's certification; and (4) medical information which may be exculpatory is unavailable to the only entities that conduct any review of the FCC Forms 610. What is needed is a more effective filter, to insure that those who require the exemption are the only ones who obtain it. From the beginning of the exemption process, the Commission's intention has been to accommodate handicaps in administration of examination elements, rather than to exempt handicapped persons entirely; exemptions would only be used where none will suit the needs of the applicant. In those few cases where exemptions are required, it is not much to ask, nor is it any intrusion on the privacy of the person who seeks the exemption, that he or she verify the entitlement to it by provision of medical records establishing that a severe handicap exists, and to participate in a good-faith attempt at the Element 1B or 1C

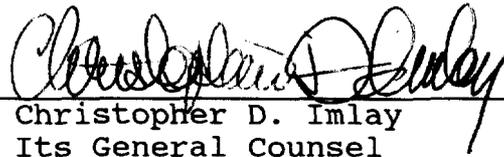
examination, with all necessary procedural accommodations. It is to be remembered in this context that all such candidates have previously demonstrated proficiency in telegraphy by passing Element 1A in the first place. Merely sitting for a telegraphy examination cannot be a significant burden on anyone seeking an exemption based on a physician's certification.

Therefore, the foregoing considered, the American Radio Relay League, Incorporated again 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 in the League's Petition, and as specified in the Appendix attached thereto.

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

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CERTIFICATE OF SERVICE

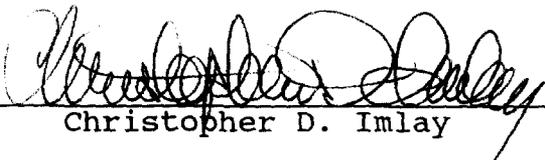
I, Christopher D. Imlay, do hereby state under penalty of perjury that I did cause copies of the foregoing Reply Comments of the American Radio Relay League, Incorporated, to be mailed, postage prepaid, to the following, the 13th day of January 1998:

Bruce Perens
No-Code International
P.O. Box 70152
Richmond CA 94807-0152

Mary Kaye Favaro, M.D.
Pediatrics & Family Prac.
5390 Dorchester Road
Charleston, SC 29418

Frederick O. Maia
200 E. Randol Mill Road, Ste. 608-A
Arlington, TX 76011

Norman G. Harrill
7 Skylyn Court
Asheville, NC 28806



Christopher D. Imlay