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

In the Matter of	)	
	)	
Amendment of Sections 0.453(d)(4) and 0.457(f) of the Commission's Rules Concerning Electronically Stored Application and Licensing Data	)))	**WT Docket No. 15-81**

To: The Commission

COMMENTS OF ARRL, THE NATIONAL ASSOCIATION FOR AMATEUR RADIO

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL), by counsel, hereby respectfully submits its comments in response to the *Notice of Proposed Rule Making*, FCC 15-40, 30 FCC Rcd 3245, released March 31, 2015 (the Notice).[1] The Notice proposes to amend the Commission's rules to specify that historical amateur radio licensee address information will not be routinely available for public inspection. To implement the changed status of such historical licensee address data, the Commission proposes to remove from public view in the Universal Licensing System (ULS) amateur radio licensee address information that is not associated with a current license or pending application. The stated justification for this proposed action is that it will "enhance amateur radio operators' privacy without undermining the public interest in knowing who is authorized to operate on amateur spectrum."[2] The Commission also seeks comment on whether this approach should be extended to individual licensees in any other Wireless Radio Service, such as the General Mobile Radio Service, databases relative to commercial radio operator

[1] The Notice was published in the Federal Register on April 17, 2015. See 80 Fed. Reg. 21200. Accordingly, these comments are timely filed.
[2] Notice, at ¶ 1.

licensees, and those for individuals who hold ship station and/or aircraft station licenses.[3] Finally, the Commission asks[4] whether other information – including *current* address information – should be removed from public view in the ULS. In the interest of the Amateur Radio Service in continuing the long and successful tradition of self-administration and self-regulation in the Amateur Radio Service, and in the high level of integrity in the volunteer examination program, and in order to provide the Amateur Service with the tools to continue those traditions, ARRL states as follows:

1. The Commission's proposed action appears to be internally generated. The Notice indicates that the Commission has heard occasionally from individual Amateur Radio licensees who have expressed concerns about the public availability in the ULS of *current* address information for those licensees. The concerns are based on privacy, personal safety or identity theft fears. However, as the Commission notes at paragraph numbered 5 of the Notice, the Commission does not require that a home or residence address be specified in an Amateur Radio license. Anyone concerned about privacy considerations is entitled to utilize a post office box, business address, the address of a friend or relative or any valid United States address where mail from the Commission can be received by that licensee. The only criterion is that the licensee must be able to receive communications from the Commission relative to the license at the specified address. Therefore, the privacy concerns of those few licensees who have expressed them are and have been entirely within the control of the licensee himself or herself. [5]

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[3] ARRL takes no position on any proposed change in the license databases relative to any radio service other than the Amateur Radio Service.
[4] Notice, at ¶ 7.
[5] There are some instances which might justifiably concern licensees about public availability of their current residence addresses. Those that come to mind are the home addresses of police or public figures; minor children; witness protection program participants; victims of domestic violence, etc. However, as noted above, there is no need for anyone to provide to the Commission an actual residence address or the actual current location of the Amateur station under the current regulations. FCC license communications can be received and forwarded to an

2. As a matter of fact, on the other hand, information technology has made a person's current residence address immediately available for the most part via other methods. As but one example, most current address information and a good deal of historical address information can be found via the Internet at www.whitepages.com free, and at other web sites for a fee. It would serve no purpose, therefore, to withhold *current* licensee data from the ULS database under the circumstances. To the contrary, because one of the basic purposes of the Amateur Service is to promote international goodwill[6] and because Amateur Radio is a very social activity, the hubs of which are Amateur Radio clubs, Amateur Radio operators have a plethora of uses for the ULS database information. Those who depend on the availability of the information include Amateur Radio clubs which regularly contact new licensees as potential members; individual radio Amateurs (domestic or international) who need address information for the sending of "QSL" cards to United States Amateurs which confirm a radio contact; organizations such as ARRL which contact licensees whose licenses are about to expire with renewal notices and instructions; and for RACES and ARES®[7] emergency communications organizations. Emergency communications groups need the address information for the preparation of rosters of emergency communications participants. They rely heavily on the ULS database information so that they can communicate by mail with these individuals. Amateur Radio Official Observers (trained participants in the Amateur Auxiliary program that encourages rule compliance) use ULS license address data to send notices to licensees who may have been observed to have unintentionally violated a Part 97 regulation or who might have exemplified positive on-air activity. Communications by mail with licensees is an inherent component of this program.

Amateur Radio licensee by a friend or relative in another State. It is a completely flexible requirement that does not require anyone to provide personal information that will become public.

[6] 47 C.F.R. §97.3

[7] RACES is the Radio Amateur Civil Emergency Service; ARES is the Amateur Radio Emergency Service®. The former is administered by FEMA; the latter is an ARRL program.

3. Given the foregoing, it is apparent that there are a great many affirmative reasons for retaining Section 0.453(d)(4) of the Commission's Rules as it currently reads, and no valid justification exists for deleting current ULS licensee address data. The Notice indicates that the Commission agrees with this conclusion.[8] As a matter of law, moreover, at least instructive and likely determinative of the privacy status of Amateur Radio licensee address information, historical or current, is *Joel Harding*, 23 FCC Rcd 4214, 4215 (2008). In that case, the Commission concluded in a Memorandum Opinion and Order, reversing a prior Wireless Bureau decision, that an Amateur Radio licensee's address should not have been redacted when a copy of the Amateur license was produced pursuant to a prisoner's Freedom of Information Act request. The Commission noted that, while courts have found in several contexts that individuals have a significant privacy interest in their address, and that disclosure of an individual's address might subject that person to unwanted contact or harassment, *where the personal information on the license, including the Amateur licensee's address was voluntarily submitted by that licensee and now is routinely available to the public on the Internet via the Commission's ULS system, a privacy interest does not exist*. The Supreme Court held in *U.S. Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), a case dealing with the private status of criminal "rap sheets," that "privacy encompasses the individual's control of information concerning his or her person" and that "information may be classified as 'private' if it is 'intended for or restricted to the use of a particular person or group or class of person: not freely available to the public'." Private information, said the Court can be disclosed in some circumstances to the extent that such disclosures reflected "a careful and limited pattern . . . involving a restriction of information 'to the use of a particular person or group or class of

[8] At paragraph numbered 6 of the Notice, the Commission states that it "recognize(s) the importance of public access to current licensee and applicant information…".

persons.'"[9] The Commission determined in *Joel Harding*, however, that Amateur licenses and the data contained therein, unlike the rap sheets in *Reporters Committee*, are public documents, and are identified as such pursuant to a Commission rule that is published in the Code of Federal Regulations.[10] Also unlike the rap sheets, Amateur licenses (and the information contained in them) are not disclosed for selected purposes, but are routinely available to the public and the information in the license pertaining to the licensee's address was submitted by the licensee himself or herself after the licensee was placed on notice that the address information will be public. Any member of the public can obtain an unredacted copy of an Amateur license showing the licensee's submitted address information (which may or may not be a residence address for that licensee) by downloading it from the Commission's ULS database website.

4. Under the Privacy Act,[11] records that are contained in a system of records may be routinely disclosed pursuant to "routine uses" published in the Federal Register.[12] Amateur licenses are part of a system of records,[13] and one of the routine uses specified is as follows:

> Public access--the licensee records will be publicly available and routinely used in accordance with Subsection b. of the Privacy Act; ITIN Numbers[14] and material which is afforded confidential treatment pursuant to a request made under 47 C.F.R. §0.459[15] will not be available for public inspection;

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[9] *Id.*, 489 U.S. at 765.
[10] *See* 47 C.F.R. § 0.453(a)(iii)(E) (indicating public availability of authorizations in wireless radio services).
[11] 5 U.S.C. § 552a. In *Reporters Committee*, the Court cited the Privacy Act as evidence of a congressional concern, relevant to the FOIA, over the privacy of personal information. *Reporters Committee*, 489 U.S. at 766-67.
[12] 5 U.S.C. § 552a(b)(3), (e)(4)(d).
[13] Wireless Services Licensing Records FCC/WTB-1, 71 Fed. Reg. 17234, 17269-70 (Apr. 5, 2006).
[14] In the above quotation from the system of records notice, "ITIN" refers to an individual taxpayer identification number, *i.e.*, social security number. Despite the provision quoted above, the licensee's social security number is not actually entered into the ULS system. Instead, the FRN number is used as a substitute for the ITIN.
[15] The type of material that may be accorded confidential treatment under 47 C.F.R. § 0.459, as referred to in the above quotation from the system of records notice, includes confidential commercial or financial information. The Amateur Service is entirely non-commercial and no licensee can have a pecuniary interest in the communications they provide by means of that license. So such a request for confidentiality has no place in the Amateur Radio licensing context.

With the exception of any licensee information for which a request for confidential treatment has been made to the Commission (and inasmuch as such a request would not be applicable to licensee address information, there would not normally be such a request in this context), the Commission has given public notice that the address information contained in the current Amateur Radio license is public information. Having done so in the FOIA context, *address information about Amateur licensees cannot be said to be private*. For this reason, ARRL takes strong issue with the Commission's unsubstantiated conclusion in paragraph 8 of the Notice that, because the Amateur Radio Service is unique in that licenses can be issued only to individuals[16] and the service cannot be used for commercial purposes, "[t]he argument that licensees should be able to decide what information is available to the public in ULS is thus strongest with respect to the amateur service, for privacy interests might be heightened when licensees and applicants are individuals seeking authorization for non-commercial communications." There is nothing in Commission jurisprudence that supports that argument and there is a full Commission decision that compels a contrary conclusion. Nevertheless, as discussed above, licensees in the Amateur Service *do* in fact now have immense flexibility, if not complete control over the address information submitted by the applicant for a new, modified or upgraded Amateur license.

5. The Notice in this proceeding indicates that there can be a situation in which a licensee voluntarily submits license data such as a mailing address, and that is later superseded by the modification of the license or the filing of an Administrative Update (AU) in the ULS to change that mailing address. In that case, the old information is maintained on an ongoing basis and it will, absent some action to the contrary in this proceeding, always be publicly available in the ULS database. So a licensee who submits a residence mailing address and then later decides that

[16] In the case of club and military recreation stations, licenses are issued to individuals who are the license trustee or custodian, respectively of the stations. *See* 47 C.F.R. § 97.5(b)(2), (3).

he or she might not want that information to be publicly available in the FCC database, but instead might wish to use a different address, is unable to have the earlier residence address deleted from the database. For this reason, the Notice proposes to specify that historical Amateur Radio license address information will not be routinely available for public inspection.

6. It is impossible, for the same reasons enunciated above relating to current license data, and pursuant to the Commission's decision in *Joel Harding,* to consider historical amateur radio license data[17] to be private information, regardless of when it was submitted by the applicant for an Amateur license. Applicants either knew or should have known when they submitted this information that it was *not* private information, pursuant to Section 0.453(d)(4) of the Commission's Rules. At the time the information was submitted, regardless of when that was, the submitter had no expectation of privacy of the information. ARRL's view, therefore, is that there is not a valid basis for deleting historical license information. However, it must be noted in fairness that, unlike current licensee address information data (for which there are many important and valid, ongoing uses) there are relatively few valid uses of historical licensee address data, with one major exception.

7. A very important use of historical licensee data not associated with a current license is by the Volunteer Examiner Coordinators (VECs) in researching the entitlement of a candidate for an upgraded Amateur Radio operator license to examination credit for a license previously held by that candidate. The Commission decided one year ago in docket 12-283 to afford

[17] It is unclear at what point licensee data would, under the Commission's proposal, be considered to be historical licensee data subject to deletion. Would the Commission delete all licensee data the moment an Amateur Radio license expires on its face? That would be too soon, inasmuch as the licensee is entitled to recover his or her Amateur license within two years of expiration per Section 97.21(b) of the Commission's Rules. Furthermore, a person who has timely filed a license renewal application prior to the expiration (or prior to the revocation of that license by the Commission) may continue to operate for many years, long after that expiration date until the license renewal application (or revocation order) has been finally adjudicated and all administrative and judicial appeals processes are exhausted. It is important that the Commission not delete any historical license data for any licensee until, in every case, the expiration of that person's license is final and until that former licensee's operating authority is terminated.

examination credit to certain former licensees for examination elements 3 and 4. *See*, 47 C.F.R. §97.505(a).[18] This placed an additional burden on the VECs and the Volunteer Examiner (VE) teams that volunteer their services in examination administration. ARRL noted that in order to provide examination credit to license candidates for licenses previously held (which may have expired many years previously), the VEs or VECs would be called upon to authenticate old documents and to generally validate the entitlement to the alleged former licensee to the claimed examination element credit.[19] Authentication of documents and the research necessary to such validation did not fall within the skill sets of administering VEs or VECs. However, the rules are now in place and it is, for better or worse, the VEC's obligation to make sure that examination credit is granted only where the applicant is entitled to it. Using ULS historical licensing data is a principal means of verifying that an examination candidate who claims credit for examination elements 3 and 4 is actually the person who formerly held a license that would entitle him or her to the credit provided for by Section 505(a) of the Rules. Having placed a difficult authentication/verification burden on VECs and/or VEs a year ago, it is not now reasonable to deprive the VECs and VEs of the ability to ensure the integrity of the volunteer examination

[18] See, *Amendment of the Amateur Service Rules Governing Qualifying Examination Systems and Other Matters*, Report and Order, 29 FCC Rcd. 6311 (released June 9, 2014).

[19] The process for affording prior licensees examination credit works as follows: First, holders of expired licenses must attend an examination session. The Commission held that all expired license exam credit be done through a VEC via their VE Teams. At the examination session the candidate presents a photo ID and his or her expired license proof, pays the exam session processing fee and takes a Technician exam. At VE exam sessions it is the applicant (not the VEs or coordinating VEC) who has the burden of supplying evidence of holding valid expired license exam credit. Then the VE Team prepares and mails all session paperwork to the coordinating VEC. Once the session results arrive at the VEC, the VEC staff must verify all session documentation. The documents used for expired license exam element credit must be validated by the VEC and the test documents must be confirmed as being passed. Finally, the session data and information from the 605 forms can then be keyed and submitted to the Commission. Speaking only for the ARRL-VEC, having access to historical data has aided in detecting and precluding fraud in this process, such as use of an old license of a relative for examination credit, or proffering a license that shows the same name as that of the applicant.

program by revoking access to information by which, at least in part, a VEC might verify an applicant's claim of entitlement to examination credit.

8. The VEC problem could be remedied relative to continued access to historical Amateur Radio licensee data if the Commission were to allow access to the historical licensee data by means of a login username and password, the availability of which could be limited to VECs. All VECs already have such username and password assigned by the Commission for submission of electronic batch filing data through a Commission EBF web page. VECs could log in to a unique access area of the ULS with the same access information in order to view historical data for purposes of examination element credit.

9. Should the Commission decide to proceed with the proposal to modify Part 0 of the Commission's Rules to classify historical Amateur Radio license address information as "not routinely available for public inspection," ARRL would recommend that the language specified in the proposed Appendix to the Notice for the proposed Subsection 0.457(f)(2) not be adopted as proposed. That Subsection would, as proposed, read as follows:

> (2) With respect to the Amateur Radio Service as that term is defined in Section 97.3(a), address information on expired, canceled, or terminated licenses; archived versions of active licenses; and processed applications will not be made available for public inspection by the Commission. For such licensees, disclosure of an individual's historical address information is considered clearly unwarranted invasion of personal privacy.

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In ARRL's view, the last sentence of the proposed Subsection quoted above is neither accurate nor necessary. Based on the analysis above, the disclosure of historical address information is not a "clearly unwarranted invasion of personal privacy" pursuant to rather specific Commission jurisprudence which holds that it is in fact not private information. Furthermore, making such an assertion is unnecessary because an attempted justification of a rule need not be included in the

text of the rule itself. Thus, while ARRL does not view any compelling reason to withdraw from public access historical license data, and in fact strenuously objects to the withdrawal of such data from, at least, VECs, there is not as much of a compelling reason to continue to have such historical address information available generally as there is for current license data.

10. In summary, the Notice proposal does not provide a substantial justification for the withholding from public inspection in the ULS of historical address information for an Amateur Radio licensee. The Commission has provided ample flexibility all along in its rules such that licensees need never have provided any actual residence information to the Commission which would become public. Those licensees were or should have been aware all along that the address information that they themselves chose to provide to the Commission would become public information because they were on notice all along that such was the case. No address information furnished to the Commission need indicate where the licensee, his or her family, or the stations are actually located. In any case, residence address information is typically available about individuals from a plethora of online sources other than the ULS. Nor has there ever been an expectation of privacy in address information submitted to the Commission. Amateur Radio operators have numerous, very valid reasons to access current information about the mailing addresses for other licensees and deleting that information would be substantially harmful to the effectiveness of the Service. As to historical license address data, there is an important use to be made by VECs, who must validate the claims of prior license status for purposes of providing examination credit for licenses previously held. If, notwithstanding the absence of good cause for the deletion of historical license data, the Commission should choose to proceed with that part of the Notice proposal, the proposed language for Subsection 0.457(f)(2) should not be adopted as

set forth in the Notice. The last sentence of that proposed Subsection is not accurate and is unnecessary in any case.

Now, therefore, the foregoing considered, ARRL, the national association for Amateur Radio, hereby respectfully requests that the Commission resolve the issues raised in the Notice of Proposed Rule Making in this proceeding in accordance with the recommendations contained herein, and not otherwise.

Respectfully submitted,

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