

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

In the Matter of)
)
 ANCHORAGE VOLUNTEER EXAMINER) WT Docket No. 11-130
 COORDINATOR)
)
 Request for Waiver of Section 97.505(a))

ORDER

Adopted: January 23, 2012

Released: January 24, 2012

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* This *Order* denies a request for a temporary blanket waiver of Section 97.505(a) of the Commission’s Rules.¹ The Anchorage Volunteer Examiner Coordinator (Anchorage VEC) seeks a waiver to allow volunteer examiners (VEs) to give individuals whose amateur radio operator licenses have expired examination credit for examination elements previously passed so that former licensees can be relicensed without retesting.² Anchorage VEC seeks this waiver pending the outcome of a related rulemaking petition.³ For the reasons set forth below, we deny the waiver request.

2. *Background.* To demonstrate that he or she is qualified to be issued a new or upgraded amateur radio operator license, a person must pass an examination, or otherwise receive credit, for the examination element(s) required to qualify for the relevant operator license.⁴ A person receives credit for an examination element if he or she presents a certificate of successful completion of an examination showing that he or she passed the element within the previous 365 days, or an unexpired (or expired but within the two-year grace period for renewal⁵) operator license that required passage of that examination element.⁶ With one narrow exception,⁷ element credit is not given for an amateur operator license that

¹ 47 C.F.R. § 97.505(a).

² See Waiver Request dated July 6, 2011 from Anchorage VEC to Chief, Wireless Telecommunications Bureau (Request).

³ See Petition for Rule Making dated April 9, 2011, RM-11629. The Commission sought comment on the rulemaking petition, see *Public Notice*, Report No. 2930 (CGB rel. April 27, 2011), which remains pending.

⁴ See 47 C.F.R. §§ 97.501, 97.503.

⁵ See 47 C.F.R. § 97.21(b).

⁶ See 47 C.F.R. § 97.505(a).

⁷ 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 a Technician Class to a General Class operator license. See 47 C.F.R. § 97.501(b), (c). Prior to this date, the written examination for a Technician Class and a General Class operator license was the same. (The difference in the requirements for the two licenses was the Morse Code proficiency test, which has been eliminated.) In 1987, the Commission split examination Element 3 into Element 3A for the Technician Class license and Element 3B for the General Class license, but provided that licensees who had passed the prior consolidated examination element would still receive credit for the written examination required for a General Class license. See Amendment of the (continued....)

has expired and cannot be renewed.

3. Anchorage VEC asserts that grant of the waiver will permit individuals whose amateur radio license grants have expired to obtain a new license grant at an early date, thereby allowing them to again participate in normal amateur radio activities.⁸ It also states that several potential beneficiaries of this action are of advanced years and are interested in prompt resolution of this matter.⁹ The waiver request was placed on public notice¹⁰ and comments were evenly split between those supporting the request and those opposing it.

4. *Discussion.* Section 1.925 of the Commission's Rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹¹ We conclude that Anchorage VEC has met neither requirement.

5. Allowing a licensee whose license is active or can be renewed to receive element credit for examination elements previously passed is consistent the basis and purpose of the amateur service, which includes encouragement and improvement of the service through rules which provide for advancing skills in both the communication and technical phases of the art.¹² Individuals who do not hold a current or renewable amateur radio operator license, however, regardless of whether they have held one in the past, must demonstrate their qualifications to be amateur radio operators before obtaining a new license.¹³ We conclude, therefore, that grant of the requested waiver to allow examination credit to be granted for any previously held amateur service operator license would not serve the underlying purpose of the rule.

6. Additionally, we note that amateur radio testing opportunities are widely available. VEs can administer tests at any location and time convenient to them and the examinee. Consequently, Anchorage VEC has not shown that requiring retesting of examinees whose operator licenses expired more than two years ago, including those of advanced years, is inequitable or unduly burdensome, or that these examinees have no reasonable alternative.

7. *Conclusion.* We conclude that Anchorage VEC has not shown good cause for waiver of the amateur service rules to allow VEs to give examination credit to an examinee who holds an amateur radio operator license document that has been expired for more than two years. Therefore, we decline to waive Section 97.505(a) of the Commission's Rules. This action is without prejudice to Anchorage VEC's pending rulemaking petition.

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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).

⁸ See Request at 2.

⁹ *Id.*

¹⁰ See Wireless Telecommunications Bureau Seeks Comment on Request by Anchorage Volunteer Examiner Coordinator to Allow Examination Credit for Expired Amateur Radio Operator Licenses, *Public Notice*, WT Docket No. 11-130, 26 FCC Rcd 10712 (WTB MD 2011).

¹¹ 47 C.F.R. § 1.925(b)(3); see also *WAIT Radio v FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹² See 47 C.F.R § 97.1(c).

¹³ 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).

8. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by the Anchorage VEC on July 6, 2011 IS DENIED.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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