

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

In the Matter of)	
)	
1998 Biennial Regulatory Review --)	WT Docket No. 98-143
Amendment of Part 97 of the Commission's)	
Amateur Service Rules.)	
)	
FCC Report and Order)	FCC Report and Order 99-412
Released December 30, 1999)	

To: The Secretary,
Federal Communications Commission

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Harold Furchgott-Roth
Commissioner Gloria Tristani

**OPPOSITION OF NO CODE INTERNATIONAL TO THE PETITION FOR PARTIAL
RECONSIDERATION FILED BY WORMSER, ADSIT, AND DINELLI IN THE
ABOVE-CAPTIONED MATTER**

No Code International ("NCI"), on behalf of its Members and by its Board of Directors, hereby submits its Comments in Opposition to the Petition for Partial Reconsideration ("the Petition") filed in the above-captioned proceeding on or about January 17, 2000 by Alan J. Wormser, N5LF; Frederick V. Adsit, NY2V; and Michael J. Dinelli, N9BOR.

INTRODUCTION

1. NCI is a not-for-profit organization of licensed radio amateurs, as well as those interested in amateur radio but not yet licensed, which has as a major goal the global elimination of all requirements for Morse code proficiency for any class of amateur radio license. NCI was founded in 1997 and is experiencing rapid growth, both within the U.S. and internationally. While NCI has an international membership and global goals with respect to various amateur regulatory matters, a majority of its members are currently U.S. licensed radio amateurs.

2. NCI filed a restructuring proposal with the Commission prior to the release of the Notice of Proposed Rulemaking (“the NPRM”), as well as timely-filed Comments, Reply Comments, and Ex Parte Presentations in this Proceeding. NCI is an interested party in this proceeding.

3. Having reviewed the Petition, NCI urges that the Petition be summarily dismissed without delay because we find the Petitioner’s arguments to be completely without merit in that they raise no new issues not already considered by the Commission in this Proceeding, nor do they point out any procedural error on the part of the Commission in formulating its Report and Order¹ (“the R&O”) in this Proceeding.

4. Furthermore, in the Petition, the Petitioners make numerous assertions with respect to the R&O and the Commission’s handling of this Proceeding which, in our opinion, at best, indicate misconceptions with regard to the Commission’s intent in this Proceeding and, at worst, could be viewed as little more than contrivances designed in an attempt to delay the implementation of the new Rules promulgated in the R&O.

¹ FCC Report and Order 99-412, released December 30, 1999

5. We will, in the following sections of these Comments, address each of the major “issues” raised by the Petitioners and elaborate our views as to why the assertions of the Petitioners relative thereto are without merit and contrary to the best interests of the Amateur Radio Service (“ARS”) in the United States.

GENERAL ISSUES

6. In the Petition, the Petitioners assert that “*Specific elements of the R&O (FCC 99-412) contradict its stated and implied goals: to maintain the Amateur Radio Service as a fundamentally technical service and attract technically minded individuals, to encourage amateurs to advance their skills, to contribute to the radio art, and to reduce burdensome procedures inflicted on volunteer examiners.*”²

7. NCI finds absolutely no evidence in the R&O supporting the Petitioners’ assertions. On the contrary, we find the Commission’s decisions in this Proceeding to be entirely consistent with its stated goals. Furthermore, the Commission’s decisions in the R&O are supported by the body of comment in the Proceeding and we find no evidence of any procedural error on the part of the Commission whatsoever.

8. NCI believes that the Commission’s simplification of the licensing structure, elimination of undue emphasis on Morse code proficiency, and other changes to the Commission’s Rules implemented in the R&O will meet all of the stated goals of the Proceeding and promote a healthier, more progressive Amateur Radio Service, better able to fulfill the Basis and Purpose outlined for it in Part 97.1 of the Commission’s Rules [47 C.F.R. §97.1].

² The Petition, at 7.

“LOWERING OF TECHNICAL STANDARDS”

9. Despite the Petitioners’ litany of assertions to the contrary³, NCI also finds absolutely no evidence in the R&O that it is, or was, the Commission’s intent to “lower technical standards” or that the changes to the Commission’s Rules promulgated in the R&O will have the effect of “lowering technical standards.”

10. In the Petition, the Petitioners blatantly mischaracterize both the letter and the intent of Commission’s decisions with respect to written examinations in the R&O⁴ as follows: “... *the R&O shares the opinions of Ray Adams that Technicians do not need to understand how their radios work, because most amateurs these days do not know how to repair their own equipment.*”⁵ ; and “*The R&O shares the opinion of the NCVEC (Fred Maia) comment that today’s Technician Class licensees primarily purchase commercially-made radios, and therefore do not need to know how the electronics work.*”⁶ These mischaracterizations ignore virtually all of the letter of the Commission’s decision, instead focusing and relying in their entirety upon small, isolated portions of two comments referred to in the R&O as if they were the sole basis of the Commission’s decision. Clearly the Commission’s decision was based on a thorough and complete review of the entire body of comment and the ultimate decisions were made on the basis of what the Commission determined would best serve the public interest and promote a healthy and progressive future for the ARS.

³ The Petition, at 8, 9, 10.

⁴ FCC Report and Order 99-412, at 42, as referenced by Petitioners.

⁵ The Petition, at 15.

⁶ The Petition, at 16.

11. The Petitioners also state: “*The R&O would tend to reduce the Amateur Radio Service to another non-technical personal radio service, and would fail to attract technically inclined individuals.*”⁷. NCI submits that the preceding quote from the Petition is nothing more than the unsupported personal view of the Petitioners and represents a minority view, apparently based on the Petitioners’ personal biases, which is not supported by any reasonable reading of either the R&O or the body of comment in this Proceeding.

12. NCI finds absolutely no evidence whatsoever in the Commission’s decision in the R&O⁸ to support the contention of the Petitioners that the Commission’s intent was to “reduce test standards” or that the effect of the new Rules promulgated in the R&O would result in the alleged “reducing (of) test standards”.

13. NCI believes that any reasonable reading of the Commission’s decision clearly indicates the Commission’s intent is solely to arrive at “**... an examination system that is more relevant, that is simpler for examinees and licensees to understand, and that takes advantage of the ability that the VECs consistently have shown since 1986 to maintain the question pools.**”⁹ (emphasis added).

⁷ The Petition, at 16.

⁸ FCC Report and Order 99-412, at 42.

⁹ FCC Report and Order 99-412, at 42.

14. The Petitioners also assert that *“The R&O fails to maintain technical standards in yet another way: It reduces the total number of questions in the written tests on the upgrade path to Amateur Extra.”*¹⁰ NCI fails find any “logic” in this complaint. Obviously, reducing the number of license classes (a fundamental goal of the Proceeding) results in fewer test elements. However, the Petitioners fail to demonstrate in any convincing way that the body of knowledge required to achieve the Amateur Extra Class license (or any other class of license, for that matter) is being, or will be, reduced from present standards.

15. To “support” their contention, the Petitioners assert that: *“The R&O will merge the 4A and 4B tests into a single 50-question test, thereby reducing the question pool from 900 to only 500 questions. Such a reduction will severely reduce the scope of the questions and a less thorough test will result.”*¹¹ This assertion demonstrates the Petitioners’ fundamental lack of understanding of the new Rules promulgated in the R&O and their impact on the testing process and takes huge leaps to conclusions not supported by the R&O or the new Rules promulgated therein.

16. The Commission’s Rules¹² require that the question pools for each written element contain no less than ten times the number of questions on each written test. There is no limitation in the pertinent section of the Commission’s Rules on the number of questions which may exist in the pool for each element ... theoretically each element’s question pool could consist of a hundred, or a thousand, or more, times the number of questions comprising each test.

¹⁰ The Petition, at 19.

¹¹ The Petition, at 19.

¹² Part 97.503 [47 C.F.R. §97.503]

17. Thus, the Petitioners offer absolutely no proof, nor is there any reason to believe, that the creation of a new question pool for the new Element 4 will result in any significant reduction in either the number of questions in the pool for that element, nor in the quality or breadth of the material covered therein.

18. NCI is forced to conclude that the Petitioners fail to grasp (or refuse to accept) the elementary concept that an amateur license is a “permit to learn and experiment” not a “graduation certificate” and that, since participating in the ARS is supposed to be a learning experience, it is inappropriate to insist that an applicant for an amateur license “know everything one could possibly know” at the outset (as the Petitioners seem to feel should be the case).

19. NCI does not believe that the changes to the Commission’s Rules, as embodied in the R&O, “call for a lowering of technical standards” as asserted by the Petitioners, nor do we believe that the implementation of the prescribed changes will result in that effect. On the contrary, we believe that the changes prescribed in the R&O provide additional incentive for learning the technical material necessary to upgrade to a higher class of license because the prescribed changes remove unnecessary barriers (notably the 13 and 20 wpm Morse code tests) which have dissuaded many from undertaking to upgrade (or even to become amateurs in the first place) in the past.

20. As a final observation on this subject, NCI would note that, if the Petitioners are genuinely so concerned about the quality and quantity of questions in the question pools, they should undertake to prepare suitable question and answer sets and submit them to the NCVECs’ Question Pool Committee, which we understand welcomes such submissions.

APPLICANTS REPEATING FAILED TESTS

21. The Petitioners claim that the Commission “ignored” their “*significant comments ... which were also supported by at least 15 others.*” with respect to the subject of applicants “repeating failed test elements.” NCI first observes that the fact that the R&O does not specifically cite the Petitioner’s Comments does not in any way constitute evidence that the Commission did not consider those comments.

22. NCI contends that, out of a body of comment consisting of well over 2,000 comments, 16 comments addressing an “issue” not specifically covered in the NPRM do not indicate any significant degree of concern in the body of comment over this “issue” and that it is reasonable to assume that if a real problem existed in this regard there would in all likelihood have been more evidence thereof in the body of comment in the Proceeding.

23. Furthermore, since the Commission’s Rules specifically prohibit the re-administration of a previously failed test to an applicant¹³ and, as stated above¹⁴, “since participating in the ARS is supposed to be a learning experience, it is inappropriate to insist that an applicant for an amateur license ‘know everything one could possibly know’ at the outset,” we fail to see how any true harm could result from allowing an applicant to attempt to pass a failed element by taking a totally different version of the test.

¹³ Part 97.509(f) of the Commission’s Rules [47 C.F.R. §97.509(f)]

¹⁴ At at 18, herein.

24. The Petitioners “recommend an end to this practice,” stating that *“It is an unacceptable test procedure and would not be acceptable in any of our schools or certifying boards.”* (accompanied by an assertion, in a footnote in the Petition that: *“It is also an undue burden to a VE team, since allowing applicants to repeat failed tests over and over makes testing sessions longer and complicates record keeping.”*)

25. NCI responds to the Petitioners’ first statement by again reiterating its previous assertion that an amateur license is a “permit to learn and experiment” not a “graduation certificate” and that, since participating in the ARS is supposed to be a learning experience, it is inappropriate to insist that an applicant for an amateur license “know everything one could possibly know” at the outset. Thus comparing amateur license tests to “what would be acceptable (to) schools or certifying boards” is, inescapably, an expression of an unnecessary desire to hold applicants for amateur licenses to an unnecessarily and unjustifiable “graduation” standard.

26. With regard to the “burden” the Petitioners allege “this practice” places on VE teams, we would simply note that, if “this practice” resulted in an intolerable burden on VE teams it likely would not be as prevalent as the Petitioners claim it to be and the NCVECs would have undoubtedly commented on the subject. NCI believes that the NCVECs’ silence on this “issue” is noteworthy and indicative that the “problem” which the Petitioners allege exists is a fiction.

27. Any alleged “burden” on the VE teams should also, in all fairness, be balanced against the burden placed on applicants, who may fail an element by only a single question, by requiring them to “come back another day” when in many areas of the country they may have waited for some time and traveled a considerable distance to attend a testing session.

28. It appears to NCI that the Petitioners' recommendation to add a rule allowing only one test attempt per VE session is unnecessary, was not supported to any significant degree in the body of comment, and we therefore find it virtually unavoidable to conclude that it represents an *"I've got mine, so now let's keep as many people as possible out."* viewpoint on the part of the Petitioners which does not comport well with the Commission's stated intentions of making amateur radio more accessible.

AMATEUR EXTRA CLASS TELEGRAPHY EXAM

29. The Petitioners contend that *"The R&O states that telegraphy is a hindrance to those that might enter the Amateur Service or attempt to upgrade skills. Yet, the Amateur Extra Class, with the 20 wpm telegraphy exam, remains the fastest growing class of license after the Technician. The R&O is incorrect to say this is a barrier. It is only a barrier to unmotivated individuals."*¹⁵

30. In response to these contentions, NCI maintains first that, in the body of comment in the Proceeding, there was considerable evidence that high speed Morse testing (both the 13 wpm and the 20 wpm tests) have presented a significant barrier to entry, and advancement in license class, in the ARS.

31. Secondly, while the Amateur Extra Class has seen some modest growth in numbers in recent years, that growth has been insignificant compared to the number of licensees entering the ARS via the "no-code" Technician class.

¹⁵ The Petition, at 26.

32. Thirdly, a very small percentage of Technicians have upgraded to General or higher class licenses due to the Morse test requirements, as evidenced by the decline in numbers of General and Advanced class licensees during the same period. (In other words, virtually all of the growth in the Extra class has come at the expense of the General and Advanced classes.)

33. Finally, and **most importantly**, the purpose of the tests for amateur licenses is **not** to measure “motivation,” “commitment,” or to enforce some form of “work ethic” on applicants for amateur licenses by forcing them to “jump through hoops” in the name of “tradition.” The **sole legitimate** purpose for amateur license tests is to determine that an applicant possesses sufficient knowledge of the Commission’s Rules and basic RF and electronic theory and safety practices to satisfy the Commission’s legitimate regulatory objectives.

34. The Petitioners also dredge up all of the predictable “Morse Myths” with respect to “how Morse skill is ‘vital’ to the ability of the ARS to adequately fulfill its emergency communications role,” “Morse gets through were nothing else will,”¹⁶ etc. ad nauseum.

35. These tired “justifications” for high-speed Morse testing have been bandied about for many years in the amateur community and were represented to some degree in the body of comment, but rejected by the Commission.¹⁷

¹⁶ The quoted text in 34 is not an exact quote from the Petition, but rather a paraphrasing of the gist of the Petitioners’ assertions employed in the interest of condensing a large amount of generally false, exaggerated “justifications” for Petitioners’ desire to retain a 20 wpm Morse test as a requirement for an Amateur Extra class license.

¹⁷ FCC Report and Order 99-412, at 30 and 31.

36. The Petitioners also attempt to assert that the additional privileges afforded to Amateur Extra Class licensees are minimal and that the Petitioners “*believe that the 5 wpm General Class is reasonable accommodation for those rare individuals who, for reason of a **qualified** disability, would have difficulty taking even an accommodated telegraphy exam at 20 wpm. For that reason, the use of code waivers for the Amateur Extra Class is now irrelevant under the R&O.*” NCI finds the Petitioners’ elitist, “let them eat cake” attitude, inferring that the disabled “should be satisfied with a General class license” deplorable to say the least.

37. Furthermore, the Petitioners ignore the fact that the merging of the “old advanced” and “old extra” classes into the new Amateur Extra class specified in the new Rules promulgated in the R&O results in there being a significant difference in privileges between the General class and the new Amateur Extra class.

38. To hold such significant portions of the HF bands “hostage” to a demonstration of high speed Morse proficiency is unjustifiable. The Commission acted correctly and wisely in eliminating the 20 wpm Morse test requirement for the Amateur Extra class license.

39. Finally, NCI emphatically contends that the retention of a 20 wpm Morse test for the Amateur Extra Class license, as proposed by the Petitioners, would have a tremendous negative effect on the willingness and motivation of lower class licensees to even attempt to upgrade, which would result in a significant loss of incentive for those licensees to learn the more advanced technical material which is truly important to the Commission’s stated goal of promoting technical advancement and excellence in the ARS.¹⁸

¹⁸ FCC Report and Order 99-412, at 30.

TECHNICIAN: DATABASE RECORDS AND ENFORCEMENT

40. NCI contends that the Commission and its staff, not the Petitioners, are the only entity qualified to render judgment on what license data are necessary for the Commission to maintain in support of the Commission's regulatory and enforcement obligations.

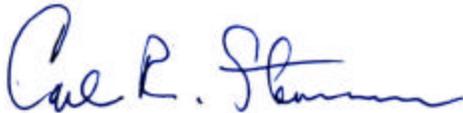
41. NCI further finds the statements by the Petitioners that "*The burden of proof of Technician Plus status will be on the licensee to maintain his paper license or CSCE in perpetuity. The petitioners consider this an undue burden on Technician Plus licensees ...*" to be laughable at best and patently contrived.

CONCLUSION AND RECOMMENDATIONS

42. Since the Petition raises no new factual material not covered in the body of comment in the Proceeding and considered by the Commission in its decision (whether specifically cited in the text or footnotes of the R&O or not), and there was no procedural error on the part of the Commission in the Proceeding, there is no **legitimate** basis for reconsideration of **any** of the aspects of the Commission's decisions as embodied in the R&O in the Proceeding.

43. NCI, therefore respectfully requests that the Commission **DENY** the instant Petition for Partial Reconsideration without delay in order to avoid any further confusion in the amateur community or delay in the implementation of the Commission's decisions, as outlined in the Report and Order.

Respectfully submitted,
No-Code International

A handwritten signature in blue ink that reads "Carl R. Stevenson". The signature is written in a cursive style with a horizontal line underneath the name.

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(as delegated and approved by the Board as a whole)

CERTIFICATE OF SERVICE:

On or about January 20, 2000, a document entitled "Petition for Partial Reconsideration" was filed in WT Docket No. 98-143, seeking partial reconsideration of the Commission's Report and Order (FCC Report and Order 99-412) by Alan J. Wormser, Frederick V. Adsit, and Michael J. Dinelli.

On January 24, 2000 I mailed a true and accurate copy of the attached document (described as "Opposition of No Code International to the Petition for Partial Reconsideration Filed by Wormser, Adsit, and Dinelli in the Above-Captioned Proceeding") to the Petitioners:

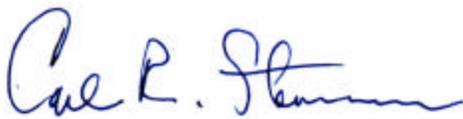
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as required by Sections §1.47 and §1.405 of the Commission's Rules

[47 C.F.R. §1.47, 47 C.F.R. §1.405]



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