



Carl R. Stevenson - WK3C  
Executive Director  
4991 Shimerville Road  
Emmaus, PA 18049 USA

August 13, 2003

RECEIVED

AUG 13 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Marlene H Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Vistronix, Inc  
236 Massachusetts Avenue, N E  
Suite 110  
Washington, DC 20002

Dear Ms Dortch

Attached you will find the original and nine (9) copies of a Petition for Rulemaking filed on behalf of the members and Board of Directors of No Code International

Should there be any questions with respect to this filing, please contact me at the above address, or via e-mail at the address below

Respectfully submitted,

A handwritten signature in black ink that reads "Carl R. Stevenson". The signature is fluid and cursive.

Carl R. Stevenson  
Executive Director, No Code International  
[http //www nocode org](http://www.nocode.org)

OTG  
WIB  
03-257

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

In the Matter of )  
)  
Amendment of Part 97 of the Commission's )  
Amateur Radio Service Rules to Eliminate ) RM -  
Morse Code Proficiency Testing Requirements )  
For All Classes of Amateur Licenses )  
)  
To The Commission )

RECEIVED

JUN 13 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**PETITION FOR RULEMAKING**

No Code International ("NCI") hereby respectfully submits this Petition for Rulemaking, seeking the expeditious elimination of the remaining Morse code proficiency test requirement from the Commission's Part 97 rules for all classes of amateur license issued by the Commission

While NCI is an international organization, with thousands of members in 63 countries and active national chapters in 12 countries, including the U S , a significant majority (74%) of NCI's current members are U S licensed amateurs

NCI was an active participant in WT Docket No 98-143<sup>1</sup>, wherein the Commission reduced the Morse code proficiency test requirement to the 5 wpm minimum that it believed would be compliant with unwaiveable obligations for Morse testing under the ITU Radio Regulations in effect at the time<sup>2</sup>

Now that the ITU Radio Regulations have been modified, effective July 05, 2003, *with the full support of the U.S administration and without opposition by a single ITU member administration*, to eliminate that unwaiveable requirement<sup>3</sup>, we respectfully request, for the reasons outlined herein, that the Commission expeditiously take the next logical, progressive step – the complete elimination of the remaining Morse code proficiency test requirements from the Commission's Part 97 rules for all classes of amateur license issued by the Commission

<sup>1</sup> See generally the Report and Order, FCC 99-412, adopted Dec 22, 1999, released Dec 30, 1999

<sup>2</sup> See the Report and Order, FCC 99-412, adopted Dec 22, 1999, released Dec 30, 1999, at 25-26

<sup>3</sup> See the Provisional Final Acts – WRC-2003, Geneva, *specifically* Article 25 MOD COM4/364/5 (B20/388/5), which removes the previously unwaiveable Morse code test requirement for prospective amateur licensees seeking licenses that convey operating privileges in the bands below 30 MHz

**TABLE OF CONTENTS**

**EXECUTIVE SUMMARY ..... 3**

**INTRODUCTION AND BACKGROUND..... 4**

**VIRTUALLY NO GOVERNMENT OR COMMERCIAL RADIO SERVICE USES MORSE TELEGRAPHY IN TODAY'S WORLD ..... 5**

**MORSE SKILL IS NO LONGER REQUIRED FOR EFFECTIVE EMERGENCY COMMUNICATIONS BY AMATEUR OPERATORS..... 6**

**THE MAINTENANCE OF MORSE PROFICIENCY TESTS AS A REQUIREMENT FOR ANY AMATEUR RADIO LICENSE IS NO LONGER IN ACCORD WITH THE PURPOSE OF THE AMATEUR RADIO SERVICE AND SERVES NO LEGITIMATE REGULATORY PURPOSE ..... 7**

**THE MAINTENANCE OF THE MORSE REQUIREMENT APPEARS TO BE CONTRARY TO ONE OF THE COMMISSION'S STATUTORY MANDATES..... 8**

**EVEN THE IARU RECOGNIZES THAT CONTINUING MORSE PROFICIENCY REQUIREMENTS IS NOT IN THE BEST INTEREST OF THE FUTURE OF THE AMATEUR RADIO SERVICE..... 9**

**THE *ONLY* REASON THAT THE COMMISSION CITED FOR KEEPING *ANY* MORSE TESTING AT THE TIME OF THE R&O NO LONGER EXISTS..... 10**

**OTHER ADMINISTRATIONS HAVE ALREADY ELIMINATED MORSE TEST REQUIREMENTS AND MANY MORE ARE EXPECTED TO FOLLOW SUIT..... 11**

**THE COMMISSION IS NO LONGER BOUND BY AN UNWAIVEABLE REQUIREMENT IN THE ITU RADIO REGULATIONS AND SHOULD ACT PROMPTLY TO REMOVE AN UNNECESSARY, RESTRICTIVE REQUIREMENT..... 12**

**THE COMMISSION HAS THE AUTHORITY TO AMEND ITS PART 97 RULES TO ELIMINATE TEST ELEMENT 1 BY EXPEDITED ORDER WITHOUT FORMAL NOTICE AND PUBLIC INPUT..... 13**

**SPECIFIC RELIEF REQUESTED..... 16**

**APPENDIX A..... 17**

## EXECUTIVE SUMMARY

Morse telegraphy once was the only means of communicating by means of radio signals and for quite some time a Morse proficiency requirement for amateur operators was necessary and made sense. But changes in technology have rendered Morse telegraphy essentially obsolete, except in the Amateur Radio Service, where some number of Morse enthusiasts remain, pursuing the use of Morse telegraphy as an essentially recreational activity.

In fact, the *only* legitimate regulatory and technical reasons for maintaining a Morse proficiency requirement for amateur operators disappeared *many* years ago, but it has, until now remained a requirement because of outdated provisions in Article 25 of the ITU Radio Regulations (“the Radio Regulations”).

In its Report and Order in WT Docket No. 98-143, adopted December 22, 1999 and released December 30, 1999, the Commission simplified and restructured the amateur licensing system outlined in Part 97 of the its rules, reducing the number of classes of license from 6 to 3 and, at the same time, eliminating 13 wpm and 20 wpm Morse proficiency requirements, leaving a single 5 wpm Morse proficiency requirement for the two highest remaining classes of license.

At that time, the Commission *clearly* determined that *a Morse proficiency requirement did not comport with the basis and purpose of the Amateur Radio Service* and, further, that *it served no regulatory purpose*. But, at that time, the Commission could not completely eliminate all Morse proficiency requirements without being in derogation of its obligation under the Radio Regulations, so the Commission kept only the minimum requirement that it believed met that obligation.

In fact, that obligation under the Radio Regulations was the *only* reason that the Commission cited in its Report and Order for keeping *any* Morse proficiency requirement whatsoever.

However, as outlined herein, with the signing of the Final Acts of the World Radiocommunications Conference, 2003, in Geneva on July 4, 2003, effective July 5, 2003 *the Commission is no longer bound to maintain any Morse proficiency requirement*.

In the following sections of this Petition for Rulemaking, the Petitioner, No Code International, will detail the facts in history and law supporting its request that the Commission expeditiously eliminate the remaining Morse proficiency requirement from its Part 97 rules for the Amateur Radio Service and additionally demonstrating that *it is clearly within the Commission's authority to do so promptly by an expedited order without formal notice and public input*.

## INTRODUCTION AND BACKGROUND

1 In the very early days of amateur radio, and radiocommunications in general, Morse telegraphy was the only available mode of communication by means of radio signals

2 At that time, and for some time thereafter, the use of Morse by commercial and government radio services was prevalent enough that requiring Morse proficiency of amateurs was both reasonable and a practical necessity to

- ensure that amateur operators would not cause interference to government and commercial stations,
- ensure that amateur operators would be able to stay clear of, and not cause interference to maritime distress messages,
- ensure that amateurs would understand messages in Morse from government stations, ordering them to cease operations in times of war or other emergencies,
- promote the formation and continuation of a “pool of (Morse) trained operators” that could be pressed into service on short notice in times of war, disaster, or other national, regional, or local emergencies

3 In fact, in 1936 the FCC raised the speed of Morse code tests from 10 words per minute to 13 words per minute

4 However, it can be established from existing documentation<sup>4</sup> that the covert objective of that change was to control the number and growth of voice operators (using AM transmission) in the amateur service, to curb *perceived* “overcrowding” of the amateur bands

5 The waiver frequency in international regulations above which administrations could choose to not require Morse testing changed successively from 1000 MHz to 144 MHz to 30 MHz at competent World Radiocommunications Conferences between 1946 and 1979

6 It is difficult to find any radio physics explanation for the lowering of waiver frequency and it is more likely that these were purely political changes in an attempt to populate the higher bands with more operators, as the higher bands were under-used in some countries

7 However, times and technology have changed dramatically over the years, and all of the previously claimed reasons for requiring Morse proficiency of all amateur radio operators have disappeared, as outlined below

---

<sup>4</sup> See the article *Code Proficiency Used to Control Number of Amateurs, The origin of the 13 word-per-minute Code Speed*, at <http://www.nocodc.org/articles/filter.html>

## VIRTUALLY NO GOVERNMENT OR COMMERCIAL RADIO SERVICE USES MORSE TELEGRAPHY IN TODAY'S WORLD

8       The Commission noted in its Report and Order in WT Docket No. 98-143 (“the R&O”) that,  
“ *the design of modern communications systems, including personal communication services, satellite, fiber optic, and high definition television systems, are based on digital communication technologies. We also note that no communication system has been designed in many years that depends on hand-keyed telegraphy or the ability to receive messages in Morse code by ear.*”<sup>5</sup>

9       In support of the Commission’s observation above, rendered several years ago at the time of the R&O, we would observe that technological advances *have* rendered Morse telegraphy virtually obsolete in modern communications systems to the point where it is no longer required in *any* radio service other than the Amateur Radio Service

- the maritime community has abandoned the use of Morse telegraphy in favor of the (internationally mandated) Global Maritime Distress and Safety System (GMDSS),
- the Coast Guards of the world, including the U S Coast Guard, stopped monitoring Morse distress frequencies in the mid to late 1990’s,
- the U S military no longer routinely trains its “radiomen” in Morse – only a very few U S soldiers, sailors, and airmen are trained in Morse as “intercept operators” at a “joint services school,”,
- police, fire, and other emergency services personnel have no Morse proficiency requirements imposed on them

10       Thus, the historical need of the government, commercial, and maritime services for a “pool of (Morse) trained operators” ceased to exist, *at a minimum*, well more than a decade ago

---

<sup>5</sup> See the R&O. at 30

**MORSE SKILL IS NO LONGER REQUIRED FOR EFFECTIVE EMERGENCY  
COMMUNICATIONS BY AMATEUR OPERATORS**

11 As noted by the Commission in the R&O, amateur use of Morse in emergency communications is rare and voice, data, or video modes are the modes of preference of most amateur radio operators providing emergency communications because they are more efficient means of rapidly and efficiently transmitting the required information <sup>6</sup>

12 Moreover, on those rare occasions when Morse is used by amateurs for emergency communications it is virtually always due to operator choice and preference rather than as a matter of true necessity

13 However, some amateur operators who are proponents and enthusiastic users of Morse will claim, "*Morse skill is essential for emergency communications, because Morse will get through when no other mode will.*"

14 That assertion is demonstrably false. Modern digital modes, readily available to amateurs, can deliver "perfect copy," *at higher data rates than even the most skilled manual Morse telegraphers could achieve* - under such poor signal to noise conditions that even the most skilled Morse operator would be unable to even detect the presence of a Morse signal, let alone successfully decode it by ear

15 Finally, if Morse truly *were* essential, *or even significantly important*, to emergency communications, it would seem logical that the Commission would require Morse proficiency for those who use radio equipment in the police, fire, ambulance, and other emergency services. The fact that the Commission imposes no such requirements is rather telling in itself

---

<sup>6</sup> See the R&O. at 31

**THE MAINTENANCE OF MORSE PROFICIENCY TESTS AS A REQUIREMENT FOR ANY AMATEUR RADIO LICENSE IS NO LONGER IN ACCORD WITH THE PURPOSE OF THE AMATEUR RADIO SERVICE AND SERVES NO LEGITIMATE REGULATORY PURPOSE**

16 The Commission stated, in the R&O that, “ *because the amateur service is fundamentally a technical service, the emphasis on Morse code proficiency as a licensing requirement does not comport with the basis and purpose of the service* [emphasis added] ”<sup>7,8</sup>

17 The Commission additionally stated, in the R&O that, “ *we note that one of the fundamental purposes underlying our Part 97 rules is to accommodate the amateur radio operator's proven ability to contribute to the advancement of the radio art We believe that an individual's ability to demonstrate increased Morse code proficiency is not necessarily indicative of that individual's ability to contribute to the advancement of the radio art. As a result, we find that such a license qualification rule is not in furtherance of the purpose of the amateur service and we do not believe that it continues to serve a regulatory purpose* [emphasis added]. ”<sup>9</sup>

---

<sup>7</sup> See the R&O at 30

<sup>8</sup> See 47 C F R § 97.1

<sup>9</sup> See the R&O. at 25

**THE MAINTENANCE OF THE MORSE REQUIREMENT APPEARS TO BE CONTRARY  
TO ONE OF THE COMMISSION'S STATUTORY MANDATES**

18 As far back as the “*Codeless Technician Decision*” in 1990,<sup>10</sup> the Commission recognized, and many comments supported the fact, that “ *otherwise qualified persons find the telegraphy requirement a barrier to pursuing the purpose of the amateur service.*”<sup>11</sup> [emphasis added]

19 In fact, the Quarter Century Wireless Association (“QCWA”) stated in its 1990 comments in PR Docket No 90-55, “*It is understandable that some may not be overly enthusiastic in endorsing changes in licensing procedures which would delete the requirement of proficiency in this traditional mode of communication. Nonetheless, after consideration of the facts associated with licensing trends, we have concluded that the blanket code proficiency requirement may be a major cause of decline in the entry of many people into the Amateur Radio Service.*”<sup>12</sup> [emphasis added]

20 The American Radio Relay League (“ARRL”) stated in its comments in PR Docket No 90-55, “*An ARRL study committee has concluded that the perception of the Morse telegraphy requirement filtered out too many desirable and technically qualified operators*”<sup>13</sup>

21 In fact, NCI believes that the maintenance of outdated Morse requirements has been the *biggest single impediment* to the recruiting of otherwise qualified “new blood” (the more technically inclined and the younger generation, in particular) into the Amateur Radio Service

22 This, coupled with all of the previous Commission determinations and other evidence referenced herein, leads us to respectfully submit that continuing to maintain a Morse test requirement in the Commission’s Part 97 rules would be in clear conflict with one of the Commission’s statutory mandates <sup>14</sup>

---

<sup>10</sup> PR Docket No 90-55

<sup>11</sup> See the Report and Order in PR Docket No 90-55 adopted Dec 13, 1990, released Dec 27, 1990, at 5

<sup>12</sup> *Id.* at 9

<sup>13</sup> *Id.* at 10

<sup>14</sup> See 47 USC § 303(g), which reads “*Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest* [emphasis added]”

**EVEN THE IARU RECOGNIZES THAT CONTINUING MORSE PROFICIENCY REQUIREMENTS IS NOT IN THE BEST INTEREST OF THE FUTURE OF THE AMATEUR RADIO SERVICE**

23 While historically a strong supporter of continued Morse proficiency requirements for amateur licensees, at its meeting in Guatemala City, October 6-8, 2001, the Administrative Council of the International Amateur Radio Union (“IARU”) adopted the following resolution <sup>15</sup>

***Resolution 01-1***

*The IARU Administrative Council, Guatemala City, October 2001,*

*considering the approval without opposition of Recommendation ITU-R M.1544, which sets out the minimum qualifications of radio amateurs,*

*recognizing that the Morse code continues to be an effective and efficient mode of communication used by many thousands of radio amateurs, but*

*further recognizing that the position of Morse as a qualifying criterion for an HF amateur license is no longer relevant to the healthy future of amateur radio, [emphasis added]*

*resolves that*

*1. member societies are urged to seek, as an interim measure, Morse code testing speeds not exceeding five words per minute; [emphasis added]*

*2. setting aside any previous relevant decisions, IARU policy is to support the removal of Morse code testing as an ITU requirement for an amateur license to operate on frequencies below 30 MHz. [emphasis added]*

24 While NCI’s Board of Directors do not profess to be mind readers, it is difficult to conceive of any reason for the IARU – *historically a very pro-Morse proficiency testing organization* – to adopt such a resolution, except in final recognition that Morse proficiency requirements for access to the bands below 30 MHz are very detrimental to the future health of amateur radio and to pave the way for the elimination of such requirements from national regulations on a global scale by first removing the requirement from the ITU Radio Regulations

---

<sup>15</sup> See the summary minutes of the IARU Administrative Council meeting, Guatemala City, October 6-8, 2001 at <http://www.iaru.org/ac-0110min.html#twelve>

**THE ONLY REASON THAT THE COMMISSION CITED FOR KEEPING ANY MORSE TESTING AT THE TIME OF THE R&O NO LONGER EXISTS**

25 In the R&O, the Commission stated, “*We have considered the comments on this issue and conclude that the public interest will best be served by reducing the telegraphy examination requirement to the minimum requirement that we have found that meets the [ITU] Radio Regulations* [emphasis added] ” and “ *the Radio Regulations provide that the telegraphy requirement may be waived only for an operator of a station transmitting exclusively on frequencies above 30 MHz. In this regard, we also note, as the ARRL states, that the Radio Regulations remain an obligation of the Commission that can not be waived*”<sup>16</sup>

26 WRC-03 modified the Article 25 of the ITU Radio Regulations, effective July 05, 2003, with the full support of the U.S. and without opposition by a single ITU member administration, eliminating the previous, unwaiveable obligation on administrations to require a demonstration (test) of Morse proficiency and leaving it to the discretion of administrations to determine in their national rules whether a Morse test would be required or not. Therefore, the “*minimum requirement that meets the ITU Radio Regulations*” for any class of amateur license is now no Morse test at all <sup>17</sup>

---

<sup>16</sup> The relevant section of the ITU Radio Regulations in force at the time of the R&O read “Any person seeking a license to operate the apparatus of an amateur station shall prove that he is able to send correctly by hand and receive correctly by ear texts in Morse code signals. The administration concerned may, however, waive this requirement in the case of stations making use exclusively of frequencies above 30 MHz.”

<sup>17</sup> The relevant section of the ITU Radio Regulations NOW in force (as of July 5, 2003) reads “Administrations shall determine whether or not a person seeking a licence to operate an amateur station shall demonstrate the ability to send and receive texts in Morse code signals.”

**OTHER ADMINISTRATIONS HAVE ALREADY ELIMINATED MORSE TEST REQUIREMENTS AND MANY MORE ARE EXPECTED TO FOLLOW SUIT**

27 As of the writing of this Petition, Switzerland, the United Kingdom, and Belgium have already officially eliminated Morse test requirements and granted their “codeless” licensees access to the bands below 30 MHz in response to the actions of WRC-03, with the remainder of the CEPT countries and many other administrations expected to follow suit rapidly

28 While we understand that the Commission is under no obligation to modify its rules on the basis that other administrations’ regulatory agencies have done so, or are expected to do so, we would point out that maintaining Morse test requirements in the Commission’s rules will place prospective Commission licensees, and existing licensees desiring to upgrade to a higher class of license with more privileges, at a disadvantage compared to equally qualified individuals in other countries

29 While we reiterate our understanding that the Commission is under no inherent obligation to stay “in lock-step” with what is happening in other countries, at the same time, we do not honestly believe that the Commission would desire to, or that it would be in the public interest for the Commission to, impose more onerous and unnecessary burdens on those seeking a Commission-issued amateur radio license than would be faced by equally qualified individuals in other countries

30 We are aware of the trend throughout the recent history of the Commission to eliminate unnecessary and burdensome regulations that serve no legitimate regulatory purpose. In fact, the 1999 R&O came to pass as a result of the Commission’s initiative to undertake a biennial review of ALL of its rules, not just those relating to services where Congress mandated such biennial reviews

31 We commend the Commission on that sort of initiative and believe that it represents responsible regulation in the spirit of Thomas Jefferson’s statement “*That government is best which governs the least.*”

32 We sincerely and respectfully hope that the Commission will continue this policy trend by acting favorably and expeditiously on this Petition seeking the removal of Morse test requirements for all classes of amateur license from its Part 97 rules

**THE COMMISSION IS NO LONGER BOUND BY AN UNWAIVEABLE REQUIREMENT  
IN THE ITU RADIO REGULATIONS AND SHOULD ACT PROMPTLY TO REMOVE AN  
UNNECESSARY, RESTRICTIVE REQUIREMENT**

33 NCI understands fully that, *at the time of the R&O*, the Commission was *bound* by unwaiveable provisions of the ITU Radio Regulations then in effect, and did not then have the power or discretion to enact rules completely eliminating all Morse testing requirements, because such rules would have, *at the time of the R&O*, been in derogation of the United States' obligations under the ITU Radio Regulations

34 However, in fact, the *only* reason that the Commission gave in the R&O for keeping even the current 5 wpm Morse proficiency test as a requirement for its General and Extra class licenses was that then-existing, unwaiveable requirement in the ITU Radio Regulations and the Commission's conclusion that a 5 wpm Morse proficiency test would satisfy that then-existing, unwaiveable international obligation – *an obligation that is no longer in force as of July 5, 2003*

35 The Commission's own determinations, as well as a significant body of public comment, from the Proceedings in both 1990 and 1999, as referenced herein, clearly demonstrate that a Morse proficiency test requirement is unnecessary and undesirable, in that

- it does not comport with the basis and purpose of the Amateur Radio Service,
- it acts as a barrier to entry or advancement to otherwise qualified persons,
- it is not necessarily indicative of an individual's ability to contribute to the advancement of the radio art,
- it does not provide any indication of the examinee's good character, high intelligence, cooperative demeanor, or willingness to comply with the Commission's rules,
- it no longer continues to serve a regulatory purpose,
- it otherwise does not serve the public interest and necessity,

36 Since the Commission is no longer obligated by the ITU Radio Regulations to maintain such a requirement in its rules, NCI respectfully submits that it logically follows that the Commission should expeditiously eliminate the requirement from its rules

**THE COMMISSION HAS THE AUTHORITY TO AMEND ITS PART 97 RULES TO  
ELIMINATE MORSE PROFICIENCY REQUIREMENTS BY EXPEDITED ORDER  
WITHOUT FORMAL NOTICE AND PUBLIC INPUT**

37 The Administrative Procedures Act requires an agency such as the Commission to issue a Notice of Proposed Rulemaking and invite public comment in a rulemaking proceeding *except*

*(B) [...] when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable [sic], unnecessary, or contrary to the public interest*<sup>18</sup>

38 The same wording and requirement has been incorporated into the Commission's Rules and Regulations as Section 1.412(c) which provides

*(c) Rule changes may in addition be adopted without prior notice in any situation in which the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The finding of good cause and a statement of the basis for that finding are in such situations published with the rule changes*<sup>19</sup>

39 As explained in the material *supra*, the Commission considered the issue of continued Morse proficiency requirements in WT Docket Number 98-143 where there was extensive input from the public and concerned parties, and to this date the *only* change from that consideration is that the *only* stated reason for retaining *any* Morse proficiency test has been removed

40 In the January 29, 2003 Report and Order in *Advanced Wireless Services*<sup>20</sup>, the Commission justified its decision not to place a rule change on public notice when the issue had been thoroughly discussed in an earlier proceeding, holding that

*75 Although we did not place CTIA's petition on public notice, our decision in that regard did not prejudice CTIA. We note that various parties filed responsive comments addressing reallocation of the entire 2 MSS GHz band in 1B Docket No. 99-81,187 which demonstrates that the public was provided the opportunity to submit comment on the reallocation question raised by CTIA's petition, and did so. Moreover, the Commission has already raised and duly considered this reallocation question.*<sup>21</sup>

---

<sup>18</sup> 5 U.S.C. § 553(b)(3)(B)

<sup>19</sup> 47 C.F.R. § 1.412(c)

<sup>20</sup> See *Advanced Wireless Services*, ET Docket 99-81, FCC 03-16, 28 CR 419, 18 FCC Rcd 2223, January 29, 2003

<sup>21</sup> *Id.* at 75

41 In the relief sought in the instant Petition, a burden on applicants for amateur radio licenses would be removed, no additional requirement would be imposed, and therefore no party or other person would be prejudiced by such Commission action

42 In the November 26, 2002 Order on Reconsideration in *Enhanced 9-1-1 Emergency Calling Systems*<sup>22</sup> (2) the Commission found that

*31 [.] Courts have taken a pragmatic approach when interpreting Section 553 and have found valid those rules promulgated after the agency's issuance of a notice that fairly apprises interested parties of the issues involved, so that they may present responsive data or argument relating thereto. The Bureau's Public Notice advising of the receipt of a request for clarification from the City of Richardson and seeking comments thereon, which was published by the Commission in that part of the Federal Register containing proposed rules, constituted valid notice under Section 553.*<sup>23</sup>

43 Petitioner holds that adequate notice of the Commission's position concerning the continuance of Morse proficiency as a test element was dealt with at length in WT Docket 98-143 and that therein was constructive notice that when the ITU requirement for a Code test was eliminated (as it now has been), the Commission would reexamine the need for a Morse proficiency requirement and act accordingly

44 And finally, in the January 15, 1987 Memorandum Report and Order in *Amateur Radio Service (Repeater Coordination)*<sup>24</sup> the Commission held

*4. [.] we note that we are not limited to the action tentatively proposed in a Notice of Proposed Rule Making. Title 5 U.S.C. Sec. 553(b)(3) does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule. [citations omitted] Adequate notice is given when we clearly put interested persons on notice of the subject matter to be considered. It is enough that the notice contains a description of the subject and issues involved. [Citations omitted]*<sup>25</sup>

45 Again, petitioner holds that adequate notice was given in WT Docket 98-143 and additional notice is not warranted at present

---

<sup>22</sup> See *Enhanced 9-1-1 Emergency Calling Systems* CC Docket 94-102, FCC 02-318, 28 CR 1, 17 FCC Rcd 24282, November 26, 2002

<sup>23</sup> *Id.*, at 31

<sup>24</sup> See *Amateur Radio Service (Repeater Coordination)*, FCC Docket 85-222, FCC 86-560, 62 RR 2d 109, 2 FCC Rcd 243, January 15, 1987

<sup>25</sup> *Id.* at 4

46 In summary, Petitioners believe that the facts in this matter and in law, *with particular emphasis on the Commission's previous determinations in this matter and the body of record in prior proceedings, as outlined herein*, show that the Commission *clearly* has the authority to modify its rules on its own initiative and without further public notice or comment

47 Petitioners respectfully assert that to pursue this course would be a wise, correct, and prudent decision on the Commission's part, because

- as pointed out, it is clearly within the Commission's authority,
- it would save considerable drain on the Commission's limited and valuable resources in dealing with a matter that the Commission has already considered extensively,
- and, it would remove an unnecessary, restrictive burden, *that the Commission has already determined does not comport with the purpose of the Amateur Radio Service and serves no regulatory purpose*

48 We also respectfully ask that the Commission refrain from combining our request for the prompt elimination of Morse test requirements from its rules with other substantially unrelated issues such as, but not limited to, band segmentation, changes in the number of license classes, sweeping changes in operator privileges by license class, etc., because we believe that would result in unnecessary, protracted delay in resolving this important and, in our belief, clear-cut issue

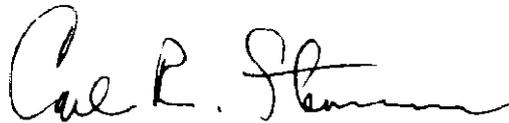
## **SPECIFIC RELIEF REQUESTED**

49 Specifically, for all of the reasons outlined and referenced herein, NCI respectfully requests that the Commission enact the following changes to its rules *in the most expeditious manner possible*

- Eliminate the “Element 1” Morse test totally from the Commission’s rules for all license classes
- Since the only testing distinction between the Technician class and the (grandfathered) Technician Plus class is the “Element 1” Morse Test, modify, as a consequential and logical change, the privileges afforded to Technician class licensees to be equivalent to those currently afforded to Technician Plus licensees and “Technician with Morse credit” licensees

50 “Appendix A,” attached hereto, contains what we believe to be the minimum necessary and sufficient changes to the Commission’s Part 97 Amateur Radio Service Rules to implement the requested changes

Respectfully submitted,



Carl R. Stevenson – WK3C  
Executive Director, No Code International  
4991 Shimerville Road  
Emmaus, PA 18049  
wk3c@wk3c.com

**APPENDIX A**

Proposed changes to Part 97 of Chapter I of Title 47 of the Code of Federal Regulations to delete the Morse code exam, and to authorize Technician Class licensees the same privileges as Technician Plus Class licensees as a consequential change

- 1 Section 97.301 is amended by revising paragraph (e) to read as follows. The frequency tables in Section 97.301(a), (b), (c), and (d) remain unchanged

**§97.301 Authorized frequency bands.**

\* \* \* \* \*

- (e) For a station having a control operator who has been granted an operator license of Novice, Technician Plus, or Technician Class

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements, see §97.303, paragraph
HF	MHz			
80 m	3 675-3 725	3 675-3 725	3 675-3 725	(a)
40 m	7 050-7 075	7 10-7 15	7 050-7 075	(a)
15 m	21 10-21 20	21 10-21 20	21 10-21 20	
10 m	28 1-28 5	28 1-28 5	28 1-28 5	
VHF	MHz			
1 25 m	--	222-225	--	(a)
UHF	MHz			
23 cm	1270-1295	1270-1295	1270-1295	(h), (i)

\* \* \* \* \*

2 Section 97.307 is amended by revising paragraphs (f)(9) and (f)(10) to read as follows

**§97.307 Emission standards.**

\* \* \* \* \*

(f) \* \* \* \* \*

(9) A station having a control operator holding a Novice, Technician Plus, or Technician Class operator license may only transmit a CW emission using the international Morse code

(10) A station having a control operator holding a Novice, Technician Plus, or a Technician Class operator license may only transmit a CW emission using the international Morse code or phone emissions J3E and R3E

\* \* \* \* \*

3 Section 97.313 is amended by revising paragraph (c)(2) to read as follows

**§97.313 Transmitter power standards.**

\* \* \* \* \*

(c) \* \* \* \* \*

(2) The 28.1-28.5 MHz segment when the control operator is a Novice, Technician Plus, or Technician Class operator, or

\* \* \* \* \*

4 Section 97.501 is amended by revising paragraphs (a) and (b) to read as follows

**§97.501 Qualifying for an amateur operator license.**

\* \* \*

(a) Amateur Extra Class operator Elements 2, 3, and 4,

(b) General Class operator Elements 2, and 3,

\* \* \* \* \*

5 Section 97.503 is amended by deleting paragraph (a)

**§97.503 Element standards.**

(b) \* \* \* \* \*

- 6 Section 97.505 is amended by revising paragraphs (a)(1), (a)(2) and (a)(3) to read as follows  
Paragraphs (a)(5), (a)(7), and (a)(9) are deleted

**§97.505 Element credit.**

(a) \* \* \*

- (1) An unexpired (or expired but within the grace period for renewal) FCC-granted Advanced Class operator license grant Elements 2, and 3
- (2) An unexpired (or expired but within the grace period for renewal) FCC-granted General Class operator license grant Elements 2, and 3
- (3) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Plus Class operator license grant Elements 2

(4) \* \* \*

(6) \* \* \*

(8) \* \* \*

(b) \* \* \*

- 7 Section 97.507 is amended by revising paragraphs (a), (a)(2), and (c) to read as follows  
Paragraph (d) is deleted

**§97.507 Preparing an examination.**

- (a) Each written question set administered to an examinee must be prepared by a VE holding an Amateur Extra Class operator license. A written question set may also be prepared for the following elements by a VE holding an operator license of the class indicated:
- (1) \* \* \*
  - (2) Elements 2 Advanced, General, Technician Plus, or Technician Class operators
- (b) \* \* \*
- (c) Each written question set administered to an examinee for an amateur operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

- 8 Section 97.509 is amended by revising paragraph (f) to read as follows. Paragraph (g) is deleted.

**§97.509 Administering VE requirements.**

\* \* \* \* \*

- (f) No examination that has been compromised shall be administered to any examinee. The same question set may not be re-administered to the same examinee.
- (h) \* \* \* \* \*