

Before the  
**Federal Communications Commission**

Washington, DC 20554

In the Matter of  
Amendment of Part 97 of the Commission's  
Amateur Service Rules to Eliminate  
Morse Code Testing

RM- 10782

**Comment in Support of Coppola's  
Petition for Rule Making**

1. Dr. P.V. Coppola, KG4QDZ; T. M. Coppola, KG4YUM; P. A. Coppola, KG4QDY, filed Petition for Rule Making (hereinafter known as the Coppola Petition) on July 18, 2003.
2. The Commission has assigned rule making number RM-101782 to the Petition.
3. The Coppola Petition requests that:
  - ❑ “Element 1<sup>1</sup> of the Amateur Service exam be permanently removed as a requirement for any license<sup>2</sup>”;
  - ❑ “Current Technician Class licensees be permitted access to the 10 meter band, and any other privileges held by Technicians with Element 1 credit”;
  - ❑ “These changes become effective immediately, on a provisional basis, while the Notice of Proposed Rulemaking is issued”;
  - ❑ “All other Elements and their requirements remain unchanged”;
  - ❑ “Band plans which support ‘CW only’ portions continue to be supported as such”.

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<sup>1</sup> 47 C.F.R. §97.503(a).

4. The Petition is a well written informal petition, and the Commission was correct in assign it a rulemaking number.
5. Unfortunately, the Petition does not provide detailed proposed revision of Part 97 of the Commission's rules.
6. To implement the Coppola Petition, I recommend that the Commission use the proposed rule changes in the Appendix of this Comment
7. Or, as an alternative use the proposed rule changes in the Appendix submitted with the Petitions for Rule Making by No Code International, RM-10786, and National Conference of Voltunteer Examiner Coordinators, RM-10787.
8. I support the Coppola Petition.

### **“CW Only” Authorized Frequency Bands**

9. The Coppola Petition asks that “Band plans which support ‘CW only’ portions continue to be supported as such”.
10. The Commission has no Authorized Frequency Band<sup>3</sup> below 30 MHz that are restricted to “CW only” emissions. There are portions of the 80, 40, and 15 meter bands that restrict Technician Plus, Technician with code, and Novice class licensees to “CW only”, but other license classes can operate other emission modes on those frequencies.
11. The authorized VHF frequencies 50.0 to 50.1 MHz and 144.0 to 144.1 MHz are restricted to “CW only” emissions.
12. I assume the Coppola Petitions is asking that existing Technician Plus, Technician with code, and Novice HF privileges be left unchanged.

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<sup>2</sup> 47 C.F.R. §97.501(a) and (b).

<sup>3</sup> 47 C.F.R. 97.301.

## Discussion

13. The Coppola Petition and the Morse code exam matter have been subject to extensive Commission public proceeding.
14. Pursuant to 47 U.S.C. §303(r), because of international radio regulation changes<sup>4</sup>, Commission decisions,<sup>5 6</sup> and as matter of law<sup>7</sup>; the Commission should delete 47 C.F.R. §97.503(a) from its rules.
15. As result of deleting 47 C.F.R. §97.503(a), the Technician and Technician Plus Classes will have passed the same or equivalent examination Elements<sup>8</sup>, and will receive the same exam Element<sup>9</sup> credit when they apply for a license upgrade. The Commission should authorize the two license Classes to use the same frequencies, emission and power levels.
16. Attached to this Comment are proposed amendments to Part 97 of Commission's rules that implement Coppola's petition.
17. In support of the Coppola Petition, and add the following additional comments.

## Reasons to Delete Morse Code exam

18. In support of the reasons given in the Coppola Petition to delete the Morse code exams for all classes of license, I would add the following.

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<sup>4</sup> ITU radio regulation S25.5, amended July 4, 2003 at the World Radio Conference 2003, Geneva, Switzerland.

<sup>5</sup> *1990 Codeless Technician Decision*, Amendment of Part 97 of the Commission's Rules Concerning the Establishment of a Codeless Class of Amateur Operator License, *Report and Order*, PR Docket No. 90-55, 5 FCC Rcd 7631 (1990), adopted December 13, 1990, released December 27, 1990, page 7631 to 7637.

<sup>6</sup> *1999 License Restructuring Decision*, 1998 Biennial Regulatory Review – Amendment of Part 97 of the Commissions' Amateur Service Rules, *Report and Order*, WT Docket No. 98-143, FCC 99-143 (1999), adopted December 1, 1998, release January 15, 1999.

<sup>7</sup> 5 U.S.C. §706(2)(A), Scope of Review, The reviewing court shall \* (2) hold unlawful and set aside agency action, findings, and conclusions found to be - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; \*.

<sup>8</sup> 47 C.F.R. §97.503(b)(1), Element 2.

<sup>9</sup> 47 C.F.R. §97.505(a)(4) and Proposed 47 C.F.R. §97.505(a)(3) in Appendix of this Petition.

19. The Commission's Morse exam rule 47 C.F.R. 97.503(a) has serious regulatory issues that should be addressed in the Petitions for Rulemaking<sup>10</sup> before the Commission.
20. To wit, the Morse code exam rule, 47 C.F.R. 97.503(a), is:
- ❑ unnecessary;
  - ❑ not in the public interest;
  - ❑ violates applicants' and licensees' "due process of law" rights;
  - ❑ is discriminatory, within the meaning of the legal definition;
  - ❑ not in conformity with the Federal statutes, 5 U.S.C. §706(2)(A) that require a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be - arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] contrary to constitutional right, power, privilege, or immunity";
  - ❑ no longer necessary for government, military, public service, and emergency communications;
  - ❑ may require medical waiver certificates to comply with the Americans with Disabilities Act;
  - ❑ produces radio telegraph operators that are no longer needed;
  - ❑ does not insure proper operation of a station;
  - ❑ is not necessarily indicative of an individual's ability to contribute to the advancement of the radio art<sup>11</sup>;
  - ❑ does not further the purpose of the amateur service<sup>12</sup>;

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<sup>10</sup> RM-10782, RM-10783, RM-10785, RM-10786, RM-10787

<sup>11</sup> *1999 License Restructuring Decision*, supra, paragraph 25.

<sup>12</sup> *1999 License Restructuring Decision*, supra, paragraph 25.

- ❑ does not serve a regulatory purpose<sup>13</sup>;
- ❑ does not attract technically inclined persons, particularly the youth of our country, and encourage them to learn and to prepare themselves in the areas where the United States needs expertise<sup>14</sup>;
- ❑ is not an indication of the examinee's good character, high intelligence, cooperative demeanor, or willingness to comply with the Commission's rules<sup>15</sup>;
- ❑ for regulatory purposes, is no more or no less than proof of the examinee's ability to send and receive text in Morse code at a specific rate<sup>16</sup>;
- ❑ proficiency as a licensing requirement does not comport with the basis and purpose of the service<sup>17</sup>; and
- ❑ does not keep amateur radio operators ready to be of service in an emergency<sup>18</sup>;
- ❑ is not a significant factor in determining an individual's ability to provide or be prepared to provide emergency communications<sup>19</sup>.

21. Some petitioners and commenter will ask the Commission to continue Morse code exam, 47 C.F.R. 97.503(a), in some less intrusive way.

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<sup>13</sup> *1999 License Restructuring Decision*, supra, paragraph 25.

<sup>14</sup> *1999 License Restructuring Decision*, supra, paragraph 30.

<sup>15</sup> *1999 License Restructuring Decision*, supra, paragraph 30; and *1990 Codeless Technician Decision*, supra, note 30.

<sup>16</sup> *1999 License Restructuring Decision*, supra, paragraph 30; and *1990 Codeless Technician Decision*, supra, note 30.

<sup>17</sup> *1999 License Restructuring Decision*, supra, paragraph 30.

<sup>18</sup> *1999 License Restructuring Decision*, supra, paragraph 31.

<sup>19</sup> *1999 License Restructuring Decision*, supra, paragraph 31.

22. The Beauregard Petition, RM-10781, continues the Morse code exams for the General and Extra class licenses, gives Technician class access to the Novice and Technician Plus HF frequency privileges, and new “phone” privileges on 40 and 80 meter bands. This petition can best be characterizes as “let them eat cake”. It appears that initially most commentors did not realize that five other petitions were being filed to delete the morse code exam for all licenses classes. The Beauregard Petition fails to address the serious regulatory issue created by the Morse code exam, 47 C.F.R 97.503(a). It appears that the purpose of Beauregard Petition is to give a modicum of HF privileges in hopes that it will save the Morse code exam requirement. It is essential a Petition for no meaningful change.
23. The Reich Petition, RM-10784, only continues the Morse code exam for the Extra class license. Many commenters see this petition as a compromise, but it will only temporarily postpone Morse code exam complaints, and change make-up of the parties filing complaints. Some commenters hope that this compromise will save the Morse code exam element. Others believe that the compromise will induce the Commission to delete the exam for the General Class license. Both fail to realize that the Morse code exam, 47 C.F.R 97.503(a), can not properly continue in any form.

## **Conclusion**

24. I believe that the Coppola Petition can be best implemented by the Commission taking the following action.
- Dismiss irrelevant Petitions for Rulemaking
  - Issue expiated Order to delete Morse code exam
  - If necessary, issue Notice of Proposed Rulemaking
  - Decide Morse code exam matter in a Separate Proceeding
25. The Commission should amend Part 97 of the Amateur Service rules to:
- (A) delete 47 C.F.R. §97.503(a),
  - (B) revise other rules affected by the deletion of 47 C.F.R. §97.503(a), and

(C) authorize the Technician Class the same privileges as the Technician Plus Class.

26. The Commission should adopt the proposed amendments to Part 97 provided in attached Appendix of this Comment.

### **Dismiss Irrelevant Petitions for Rulemaking**

27. The Commission **should not issue** Notice of Proposed Rulemaking regarding the Petition for Rulemaking filed by Peter. M. Beauregard, RM-10781. This petition continues the Morse code exam, 47 C.F.R 97.503(a), for the General and Extra Class license; and only makes trivial change in the Commissions rules to allow Technician class licensees access to a very small portion of the HF Amateur bands. Technician class licensees want the Commission to decide whether they will be allowed to upgrade their license without the need to prove Morse code proficiency. The **Beauregard Petition should be dismissed** because it is trival, and does not present the Commission with the proper regulatory question on which they should act.
28. The Commission **should not issue** a Notice of Proposed Rulemaking in regard to the Petition for Rulemaking filed by Dale E. Reich, RM-10787. While the Petition remove the Morse code exam, 47 C.F.R. 97.503(a), as a requirement for a General class license, it continues the exam for Extra class license. The wording of the Petition is confusing, and does not explain how the Commission will differentiate between General class licensees with and without code. In effect, his Petition would create a No-code General and a General Plus. The **Reich Petition should be dismissed** because it is vague, and does not present the Commission with the proper regulatory question on which they should act.

### **Issue Immediate Order to Delete Morse Code Exam**

29. The Commission should act immediately to delete its Morse code exam rule, 47 C.F.R. § 97.503(a), by an order without further notice and public input.

30. In its Petition for Rulemaking<sup>20</sup>, RM-10786, No Code International discussed how an expedited order could be issued.
31. Further, the Commission should consider if the Morse code exam rule, 47 C.F.R. 97.503(a), is: (1) in conformity with 5 U.S.C. 706(2)(A); (2) meets “due process of law” requirements; or (3) is not discriminatory (within the legal definition). If any one or all of these present issues to the Commission, they would be justified in issuing an immediate order or declaratory ruling<sup>21</sup>.
32. Further, the Commission should consider whether the Morse code exam rule, 47 C.F.R. 97.503(a), even if only retained for the Extra class license, would: (1) raise ADA issues; and (2) require the Commission to reinstate the Medical Wavier Certificates.
33. The Commission should adopt the proposed amendments to Part 97 immediately by an expedited procedure pursuant to 5 U.S.C. §553(b)(3)(B)<sup>22</sup>, 5 U.S.C. §553(d)(1) & (3)<sup>23</sup>, 47 C.F.R §303(r)<sup>24</sup> and 47 C.F.R §1.3<sup>25</sup>.

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<sup>20</sup> RM-10786, Petition for Rulemaking, No Code International, filed August 13, 2003, Commission’s ECFS records, page 13, paragraph 37 through 48.

<sup>21</sup> 47 CFR §1.2 Declaratory rulings. The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.

<sup>22</sup> 5 U.S.C. §553(b)(3)(B) provides: “General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include - either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except when notice or hearing is required by statute, this subsection does not apply - when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

<sup>23</sup> 5 U.S.C. §553(d)(1) & (3) provides: “The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except - a substantive rule which grants or recognizes an exemption or relieves a restriction; or as otherwise provided by the agency for good cause found and published with the rule.”

<sup>24</sup> 47 C.F.R. §303(r) provides: “Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall - Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.”

<sup>25</sup> 47 C.F.R. §1.3 provides: “The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”

## **If Necessary, Issue Notice of Proposed Rulemaking**

34. If the Commission finds absolutely necessary, it should **issue a Notice of Proposed Rulemaking (NPRM), in regards to the Petitions for Rule Making filed by No Code International, RM-10786, and National Conference of Volunteer Examiners Coordinators, RM-10787.** The Appendixes of both of these Petitions contain proposed rule revisions to Part 97 of the Commissions rules.
35. My Comment regarding the Petition of the National Conference of Volunteer Coordinators, RM-10787, contains an updated version of the proposed amends to Part 97 rules.
36. The Commission should include the Petitions of P. V.Coppola, RM-10782; Kiernan K. Holliday, RM-10783; and Eric R. Ward, RM-10785. These three Petitions request the deletion the the Morse code exams for all classes of Amateur Radio licenses.

## **Decide Morse Code Exam Matter in a Separate Proceeding**

37. The Amateur Radio community will never reach a consensus of the Morse code exam matter, as both sides are polarized and no new arguments have been advanced for years.
38. The Commission should hold a separate proceeding on the Morse code matter.
39. The Commission should hold a separate proceeding on the Coppola's petition, along with similar petitions, to resolve the Morse code exam matter.
40. A separate proceeding will allow other Petitions to amend license classes, authorized frequency bands, authorized emission types, and emissions standards, transmitter power stands, to be considered by the Commission on their own merit without interference of the endless Morse code debate.
41. A seperate proceeding will allow for an extended and comprehensive review period for additional individuals and organizations to draft and make other proposals.
42. This would eliminate the endless Morse code exam debate from distracting from the other matters important to Amateur Radio licensees to be decided by the Commission.

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Respectfully submitted

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# Appendix - Proposed Rules

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 the same privileges as Technician Plus Class.

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

**§97.503 Element standards.**

(a) A written examination must be such as to prove that the examinee possesses the operational and technical qualifications required to perform properly the duties of an amateur service licensee. Each written examination must be comprised of a question set as follows:

(1) Element 2: 35 questions concerning the privileges of a Technician Class operator license. The minimum passing score is 26 questions answered correctly.

(2) Element 3: 35 questions concerning the privileges of a General Class operator license. The minimum passing score is 26 questions answered correctly.

(3) Element 4: 50 questions concerning the privileges of an Amateur Extra Class operator license. The minimum passing score is 37 questions answered correctly.

6. Section 97.505 is amended by revising paragraphs (a)(1), (a)(2) and (a)(3); deleting paragraphs (a)(5), (a)(7), and (a)(9); and renumbering paragraphs (a)(6) and (a)(8) as paragraphs (a)(5) and (a)(6).

**§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) \* \* \*
- (5) A CSCE: Each element the CSCE indicates the examinee passed within the previous 365 days.
- (6) An expired FCC-issued Technician Class operator license document granted before March 21, 1987: Element 3.

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

7. Section 97.507 is amended by revising paragraphs (a), (a)(2), and (c); and deleting paragraph (d).

**§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); deleting paragraph (g); and renumbering paragraphs (h) through (m) as paragraphs (g) through (l).

**§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.
- (g) Upon completion of each examination element, the administering VEs must immediately grade the examinee's answers. The administering VEs are responsible for determining the correctness of the examinee's answers.
- (h) When the examinee is credited for all examination elements required for the operator license sought, 3 VEs must certify that the examinee is qualified for the license grant and that the VEs have complied with these administering VE requirements. The certifying VEs are jointly and individually accountable for the proper administration of each examination element reported. The certifying VEs may delegate to other qualified VEs their authority, but not their accountability, to administer individual elements of an examination.
- (i) When the examinee does not score a passing grade on an examination element, the administering VEs must return the application document to the examinee and inform the examinee of the grade.
- (j) The administering VEs must accommodate an examinee whose physical disabilities require a special examination procedure. The administering VEs may require a physician's certification indicating the nature of the disability before determining which, if any, special procedures must be used.
- (k) The administering VEs must issue a CSCE to an examinee who scores a passing grade on an examination element.

- (1) Within 10 days of the administration of a successful examination for an amateur operator license, the administering VEs must submit the application document to the coordinating VEC.