

Before the
Federal Communications Commission

Washington, DC 20554

In The Matter Of
Amendment Of Part 97 Of The Commission's
Amateur Service Rules To Continue
Morse Code Exams

RM- 10805

Opposition
to Petitions for Rulemaking

1. Charles L. Young filed Petition for Rulemaking on October 9, 2003.
2. The Commission has assigned Rulemaking number RM-10805 to the Petition.
3. The Young Petition requests that:
 - “Technician Class unchanged”;
 - “Technician Plus - require ELEMENT 2 and 3 only. Frequency access to top 50KHz of the General Class HF band plan on all voice frequencies with the following caveats. a.) Power limited to 100 W ERP on all voice bands, b.) no privileges on 17, 30, and 60m due to band size limitations”;
 - “General Class unchanged”; and
 - “Extra Class unchanged”.
4. Considering the significant of debate with the Amateur Radio community regarding the Morse exam rule, 47 C.F.R. 97.503(a), that has gone on for over a decade, the Petition makes no meaningful or responsive changes to the Commission's rules.

5. The Petition continues to 5 wpm Morse code proficiency exam, 47 C.F.R. 97.503(a), for both the General and Extra Class license. Clearly, it is unnecessary, arbitrary, capricious, and ludicrous to require manual Morse code proficiency to operate emission modes other than CW emissions. It is even unnecessary to operate CW emissions, since computers can do it automatically.
 6. The Petition would require new applicants and Technician Class license to pass Element 2 and 3 exams to gain the new proposed Technician Plus phone privileges.
 7. The Petition does not explain whether the existing Technician Plus would automatically upgraded or whether they would need to pass Element 3 exam. If the Technician Plus were required to pass the Element 3 exam, they would upgrade to a General Class license.
 8. Upon passing Element 3 exam, a Technician class licensee would have passed the same written exam elements as a General class licensee, but would not be upgraded and allowed to use non-CW emissions simple because they lack manual Morse code proficiency. That is an unnecessary, arbitrary, and capricious licensing requirement.
 9. In the Petition, Young states that any rulemaking must address the following obstacles (emphasis added): “**vested interested** in the hobby that comes from investing the effort to learn CW.” An Amateur Radio “license is not a contract between the state and the licensee, but is a mere personal permit. *Rosenblatt v. California State Board of Pharmacy*, 69 Cal. App.2d 69; 158 P.2s 199, 203. Neither is it property or a property right. *American States Water Service Co of California v. Johnson*, 31 Cal.App.2d 606; 88 P2d 770, 774.
- I oppose the Petition for Rulemaking, and request that it be **denied**.

The Commission Should Delete Morse Code Exam For All Classes Of Amateur Licenses.

10. The Morse exam rule, 47 C.F.R. 97.503(a), is creating serious regulatory issues for the Commission that can only be corrected by deleting the requirement for all classes of Amateur Radio licenses.
11. Because of prior Commission decisions,^{1 2} and as matter of law³; the Commission should immediately delete 47 C.F.R. §97.503(a) from its rules.
12. To wit, the Morse code exam rule, 47 C.F.R. 97.503(a):
 - ❑ is unnecessary;
 - ❑ is not in the public interest;
 - ❑ violates applicants' and licensees' "due process of law" rights;
 - ❑ is discriminatory, within the meaning of the legal definition;
 - ❑ is 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";
 - ❑ is no longer necessary for government, military, public service, and emergency communications;

¹ **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.

² **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.

³ 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; *.

- ❑ will 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 art⁴;
- ❑ does not further the purpose of the amateur service⁵;
- ❑ does not serve a regulatory purpose⁶;
- ❑ 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 expertise⁷;
- ❑ is not an indication of the examinee's good character, high intelligence, cooperative demeanor, or willingness to comply with the Commission's rules⁸;
- ❑ is no more or no less than proof of the examinee's ability to send and receive text in Morse code at a specific rate⁹;
- ❑ does not comport with the basis and purpose of the service¹⁰; and
- ❑ does not keep amateur radio operators ready to be of service in an emergency¹¹;

⁴ *1999 License Restructuring Decision*, supra, paragraph 25.

⁵ *1999 License Restructuring Decision*, supra, paragraph 25.

⁶ *1999 License Restructuring Decision*, supra, paragraph 25.

⁷ *1999 License Restructuring Decision*, supra, paragraph 30.

⁸ *1999 License Restructuring Decision*, supra, paragraph 30; and *1990 Codeless Technician Decision*, supra, note 30.

⁹ *1999 License Restructuring Decision*, supra, paragraph 30; and *1990 Codeless Technician Decision*, supra, note 30.

¹⁰ *1999 License Restructuring Decision*, supra, paragraph 30.

¹¹ *1999 License Restructuring Decision*, supra, paragraph 31.

- is not a significant factor in determining an individual's ability to provide or be prepared to provide emergency communications¹².
13. 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.
14. The Commission should adopt the proposed amendments to Part 97 provided in attached Appendix of this Comment.
15. I believe that the Morse code matter can best be resolved by the Commission taking the following action.
- Decide Morse code exam matter in a separate proceeding
 - Issue expiated Order to delete Morse code exam
 - If necessary, issue a Notice of Proposed Rulemaking
 - Dismiss irrelevant Petitions for Rulemaking

Decide Morse Code Exam Matter in a Separate Proceeding

16. 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.
17. The Commission should hold a separate proceeding on the Morse code matter.
18. The Commission should hold a separate proceeding on the Petitions for Rulemaking that request the deletion of the Morse code exam for all classes of Amateur Radio licenses.

¹² *1999 License Restructuring Decision*, supra, paragraph 31.

19. 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.
20. A separate proceeding will allow for an extended and comprehensive review period for additional individuals and organizations to draft and make other proposals.
21. 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.

Issue Immediate Order to Delete Morse Code Exam

22. 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.
23. In its Petition for Rulemaking¹³, RM-10786, No Code International discussed how an expedited order could be issued.
24. 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 ruling¹⁴.
25. 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 Waiver Certificates.

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

¹⁴ 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.

26. 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)¹⁵, 5 U.S.C. §553(d)(1) & (3)¹⁶, 47 C.F.R §303(r)¹⁷ and 47 C.F.R §1.3¹⁸.

If Necessary, Issue Notice of Proposed Rulemaking

27. 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.
28. 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 also request the deletion the Morse code exams for all classes of Amateur Radio licenses.

¹⁵ 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.

¹⁶ 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.”

¹⁷ 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.”

¹⁸ 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.”

Deny Petitions For Rulemaking That Request The Commission To Continue Morse Code Exams

29. The Commission **should deny** the Petition for Rulemaking filed by Peter M. Beauregard, RM-10781; Dale E. Reich, RM-10784; Charles L. Young, RM-10805; Frank W. Napurano, RM-10806; Robert G. Rightsell and Harry A. M. Kholer, RM-10807; Puerto Rico Amateur Radio League, RM-10809; James Roux, RM-10810; and FISTS CW Club, RM-10811.
30. All these Petitions continue Morse code exam for the Extra Class license.
31. Petitions filed by James Roux, RM-10810, and FISTS CW Club, RM-10811; increase the Morse code exam speed to 15 and 12 wpm respectively for the Extra Class license.
32. All of these Petitions, except the ones filed by Dale E. Reich, RM-10784 and Puerto Rico Amateur Radio League, RM-10809; continue the 5 wpm Morse code exam General Class license.
33. Petitions filed by Frank W. Napurano, RM-10806, and Robert G. Rightsell and Harry A. M. Kholer, RM-10807; continue the Morse code exam for Technician Class license.

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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.