

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

In the Matter of)	
)	RM - 10805
Various Petitions for Rulemaking Seeking)	RM - 10806
Amendments to the Commission’s Part 97)	RM - 10807
Amateur Radio Service Rules Relating to)	RM - 10808
Morse Code Proficiency Testing Requirements)	RM - 10809
)	RM - 10810
)	RM - 10811
To: The Commission)	

VIA the ECFS

OPPOSITION OF NO CODE INTERNATIONAL TO PETITIONS FOR RULEMAKING

No Code International (“NCI”) respectfully submits its Opposition to the Petitions for Rulemaking in the above-captioned Proceedings (“the Petitions”).

As the Petitioner in RM-10786, and because all of the above-captioned Proceedings are related thereto, NCI is an interested party in all of these Proceedings.

INTRODUCTION

1. In general, all of the Petitions seek to retain, in varying degrees and with varying provisions, the current requirements in the Commission’s Part 97 rules for the Amateur Radio Service (the “ARS”) that applicants for amateur licenses that grant privileges in the bands below 30 MHz pass “Element 1” – a Morse code proficiency test at 5 words per minute.
2. Because of the elimination of a mandatory requirement in the ITU Radio Regulations (“the Radio Regulations”) at the World Radiocommunications Conference, 2003 (“WRC-03”), the Commission is no longer under an obligation to continue this requirement in its Part 97 rules.

3. In fact, as pointed out in NCI's Petition for Rulemaking (RM-10786), this previously existing requirement in the Radio Regulations was the only reason cited by the Commission in its Report and Order in WT Docket No. 98-143 (the "R&O") for keeping any Morse proficiency requirement in its Pat 97 rules for the ARS.

4. Furthermore, in the R&O, the Commission reached the following determinations regarding the necessity and desirability of maintaining a Morse proficiency requirement in its Part 97 ARS rules:

- "... 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] ..." ^{1,2}
- "...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]." ³
- "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] ..." ⁴

¹ See the R&O, at 30.

² See 47 C.F.R. § 97.1

³ See the R&O, at 25.

⁴ *Id.*

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

5. WRC-03 modified the Article 25 of the 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.⁵

6. Since the Commission is no longer obligated by the Radio Regulations to maintain such a requirement in its rules and the Commission has already determined that such a license qualification rule is not in furtherance of the purpose of the amateur service and no longer continues to serve a regulatory purpose, NCI respectfully submits that it logically follows that the Commission should expeditiously eliminate the requirement from its rules.

7. By doing so, an unnecessary burden on applicants for amateur radio licenses, the Volunteer Examiners and Volunteer Examiner Coordinators, and the Commission itself, which the Commission has already determined “... *does not comport with the basis and purpose of the Amateur Radio Service ...*” and “... *serves no regulatory purpose ...*” would be removed, no additional requirement would be imposed, and therefore no party or person would be prejudiced by such Commission action.

⁵ 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.*”

ALL OF THE ARGUMENTS PRESENTED BY PETITIONERS IN THE PETITIONS IN FAVOR OF MORSE PROFICIENCY TESTS AS A CONDITION OF LICENSURE HAVE BEEN PREVIOUSLY CONSIDERED AND REJECTED BY THE COMMISSION

8. This current group of Petitions request, with varying provisions, that the Commission maintain the current Morse proficiency test requirements in its Part 97 rules.
9. Some of the Petitions even request that the Commission re-institute higher speed Morse proficiency requirements – at least for the Amateur Extra Class license class – an idea that the Commission rejected in response to a number of Petitions for Reconsideration of the R&O.⁶
10. However, ***none*** of the Petitions presents even a single new argument in support of their requests – let alone even anything remotely resembling a ***compelling*** argument –in favor of their requested relief. All of the arguments in favor of maintaining, or increasing, Morse proficiency requirements presented in the instant Proceedings have been previously considered – ***and rejected*** – by the Commission in the R&O and in response to Petitions for Reconsideration thereof.
11. Since no ***new*** arguments or facts have been presented in favor of maintaining Morse proficiency requirements in the Commission’s Part 97 rules – ***let alone increasing them*** – such arguments presented by commenters in the instant Proceedings represent nothing more than an attempt at further reconsideration of the Commission’s previous rulings.
12. The time for reconsideration is long past – ***by several years, in fact*** – and the Commission should therefore observe the bar on late reconsideration and reject the reiteration of these previously rejected arguments, both on that legal basis and for the same fundamental reasons for which it originally rejected them in both the R&O and the reconsideration thereof.

⁶ See generally the Memorandum Opinion and Order, FCC 01-108, adopted March 27, 2001 and released April 6, 2001.

SUMMARY AND CONCLUSION

13. *The Commission's own considered determinations from both PR Docket No. 90-55 and WT Docket No. 98-143 support the inevitable conclusion that the public interest would best be served by the total elimination of Morse proficiency requirements for all classes of amateur license issued by the Commission.*

14. The only barrier to such action by the Commission (the previous unwaivable requirement in the Radio Regulations) was eliminated by WRC-03, effective July 5, 2003.

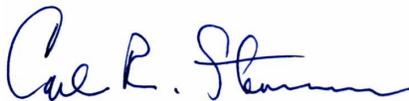
15. Even the IARU, which represents the global amateur radio community, has determined and resolved that the elimination of Morse proficiency requirements is in the best interest of the Amateur Radio Service.

16. This issue has been debated *ad nauseum* within the amateur community for at least two decades and has been one of the most divisive issues in recent memory.

17. The Commission would do the Amateur Radio Service, the amateur community, and the Commission itself a great disservice by following a lengthy NPRM/comment/reply comment cycle, likely to take approximately two years, consume untold man-hours of the Commission's limited resources, and prolong any remaining debate and contention in the amateur community.

18. We therefore again respectfully request that the Commission have the courage and exercise the good judgment to both conserve its limited resources and spare the amateur community another couple of years of internal contention by DENYING the instant Petitions and promptly granting the relief requested in NCI's Petition (RM-10786) and others (e.g, the Petition of the NCVECs) by eliminating Morse test requirements for all classes of amateur license issued by the Commission as rapidly as possible by an expedited order.

Respectfully submitted,



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