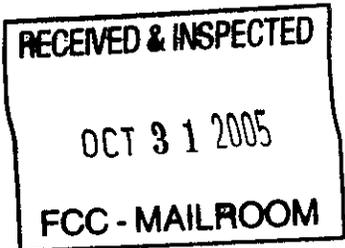


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To: Ms. Marlene Dorch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street SW  
Room TW-B204  
Washington, DC 20554

Comment on Notice of Proposed Rulemaking

In the Matter of Amendment of Part 97 of the Commission's Rules to  
Implement WRC-03 Regulations Applicable to Requirements for Operator's  
Licenses in the Amateur Radio Service

WT Docket No. 05-235; FCC 05-143

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### **Summary**

The FCC, in its Notice of Proposed Rulemaking, WT Docket No. 05-235; FCC 05-143, announced plans to remove the five word-per-minute Morse code requirement from amateur radio licensing. For the reasons stated below, the FCC should adopt the proposed rule change and remove Morse code testing as a prerequisite to receiving an amateur radio license in the United States.

### **Introduction and Background**

As a law student from New Orleans displaced by Hurricane Katrina, I have firsthand felt the disruption caused by one of the worst natural disasters in this country's history. While I was able to evacuate before the flooding began, I watched many of my fellow New Orleans residents struggle to find a way out of the city. I have since visited the city as well as some of the other more severely damaged areas of Southeast Louisiana and Southern Mississippi, and was able to see some of the devastation firsthand.

In areas severely damaged by a natural disaster, one common threat is that ordinary services we take for granted do not work for days, weeks, or even months. For instance, a friend of mine has a cell phone from St. Tammany Parish, just outside of New Orleans. I could not reach him for almost two weeks. My landlord's phone is in the city; as of late October, still did not work. In fact, 911 service was not restored in the city of New Orleans until 26 September, almost a month after the hurricane struck.<sup>1</sup> The services for which citizens have the greatest need often fail in the midst of a disaster, whether it is caused by Mother Nature or terrorist attack. As a result, a strong emergency back-up communications system is needed to step-in when necessary public services fail.

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<sup>1</sup> [www.cityofno.com/portal.aspx](http://www.cityofno.com/portal.aspx) (situation report for New Orleans on 2 October 2005).

The role of amateur radio in facilitating rescue and recovery after Katrina and other disasters is well-documented. One such story was related by an MSNBC columnist (and amateur radio operator) who described the instrumental role amateur radio operators played in rescuing 15 people stranded on the roof of a flooded New Orleans home.<sup>2</sup> Similarly, in the aftermath of the terrorist attacks of 11 September 2001, amateur radio operators filled a critical communication role when “[i]n the immediate aftermath of the crisis, telephone lines were jammed, and cell systems overwhelmed.”<sup>3</sup> Unlike telephones, which require a centralized exchange for communications to take place, amateur radio requires only a single sender and a single receiver to transmit a potentially life saving message.<sup>4</sup> Thus, when critical areas such as urban centers are damaged by natural disasters or terrorist attack, the decentralized network of amateur radio operators is needed to facilitate rescue and recovery and to help fill the gap left by disrupted communications.

The federal government has acknowledged the importance of amateur radio in a number of ways. For instance, Congress passed the Telecommunications Act of 1996 (“TCA”), which was designed to encourage development of new telecommunications technologies.<sup>5</sup> While amateur radio is certainly not a new telecommunications technology, the TCA and prior acts have played a role in supporting a necessary feature of amateur radio—the antenna tower. The Supreme Court described the TCA as putting

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<sup>2</sup> Gary Krakow. “Ham radio operators to the rescue after Katrina: Amateur radio networks help victims of the hurricane.” <http://msnbc.com/id/9228945>. 6 September 2005

<sup>3</sup> Rick Lindquist and Diane Ortiz.”9/11/01: ‘This is Not a Test.’ Amateur Radio operators mobilized within minutes of the first attack on the World Trade Center, then responded magnificently in the Washington, DC, area and Pennsylvania.” <http://www.arrl.org/FandES/field/WTC.pdf>, p. 29. November 2001

<sup>4</sup> Warren R. Wilkosz, “Amateur Radio Emergency Service: Are Communication Lines the Missing Link to Homeland Security?” 2004 U. Ill. J. L. Tech. & Pol’y 151, 160.

<sup>5</sup> Telecommunications Act of 1996 (TCA), 110 Stat. 56.

“specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of such facilities.”<sup>6</sup> In other words, Congress thought amateur radio and other wireless communication important enough in certain circumstances to override or limit traditionally local control over zoning that might prevent the construction of radio antennas needed for the operation of amateur radio.

Congress is not the only federal entity to step up to the plate for amateur radio. In June 2002, President George W. Bush authorized a federal grant of \$181,900 to the American Radio Relay League (“ARRL”) as part of the nation’s homeland security effort.<sup>7</sup> In January 2002, President Bush himself went on amateur radio to thank members of the American Radio Emergency Service (“ARES”), an organization created by the ARRL, for their efforts in helping the country prepare for an emergency.<sup>8</sup> In fact, the FCC’s own regulations express the principle of “[r]ecognition and enhancement of the value of the amateur service to the public as a *voluntary noncommercial service, particularly with respect to providing emergency communications.*”<sup>9</sup> These actions by the highest levels of the federal government demonstrate that the value and importance of amateur radio in times of need is not in dispute.

### **Where Does the Propose Elimination of the Morse Code Requirement Come Into Play?**

The amateur radio operators who came to the aid of those in need after Katrina and 9/11 did not work for the Federal Emergency Management Agency (“FEMA”) or any other federal, state or local agency. Unlike the Radio Amateur Civil Emergency Services

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<sup>6</sup> City of Rancho Palos Verdes, California v. Abrams, 125 S.Ct. 1453, 1455 (2005).

<sup>7</sup> Wilkosz, at 151.

<sup>8</sup> *Id.*, at 156, 159.

<sup>9</sup> 47 C.F.R. §97, 1 (2003) (emphasis added).

("RACES"), which is more closely regulated by the federal government, ARES is more independent.<sup>10</sup> Notwithstanding the differing degrees of regulation between ARES and RACES, both are volunteer-based and both come under the regulation of the FCC. In essence, the FCC is charged with regulating a voluntarily, unpaid force that plays a critical role in times of national emergency. Given that the FCC is "in charge" of a collection of private citizens and their private property that they voluntarily put into public service, it would make sense for the FCC to do all it can to give those volunteers as much freedom as possible while at the same time facilitating the continued health and expansion of amateur radio. Removing the Morse code testing requirement for amateur radio licensing can help accomplish that goal.

While the official position of the ARRL is that the Morse requirement should not be removed, there are a number of compelling reasons for the FCC to eliminate the requirement.<sup>11</sup> First of all, as pointed out by multiple petitioners, as well as the FCC's own NPRM on this issue, the International Amateur Radio Union ("IARU") decided in its 2003 World Conference to drop the Morse code requirement below 30 Mhz.<sup>12</sup> In fact, more than two dozen major countries have already dropped the requirement below 30 Mhz.<sup>13</sup> While the FCC should not blindly follow what is done in other countries, or by international organizations, the fact that Morse is losing support from amateur radio enthusiasts at the international level should warrant serious consideration.

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<sup>10</sup> Wilkosz, at 156.

<sup>11</sup> "FCC Proposes to Drop Morse Code Requirement for All License Classes."

<http://www.arrl.org/news/stories/2005/07/20/100/?nc=1>

<sup>12</sup> <http://www.iaru.org/rel030912.html>

<sup>13</sup> "Italy Joins No-Code Ranks as FCC revives Morse Code Debate in the US."

<http://www.arrl.org/news/stories/2005/08/10/1/?nc=1>

Because I am not an amateur radio operator, I choose to place more deference with the well-reasoned technical arguments of many of the operators whose petitions helped spur the FCC to issue this NPRM. While there is no need to rehash all, or even most of the petitions the FCC cited in the current NPRM, I will point to a couple that I find to be especially persuasive. For instance, Petitioner Ward argued, citing previous FCC decisions, that the “demonstration of proficiency in telegraphy using Morse code is no more or less than proof of proficiency in that mode of communication.”<sup>14</sup> Similarly, Petitioner Holliday, who claimed to be a well-versed user of Morse on amateur radio, wrote,

The Morse code requirement limits the number of people who take advantage of the Amateur Radio hobby. The policy of the Commission should not be to limit the use of the Service based on a requirement that most of the rest of the world and other radio services find unnecessary.<sup>15</sup>

In addition, Petitioner Holliday argued that if amateur radio was invented today, Morse code would not be considered as a requirement.<sup>16</sup> Thus, even active amateur radio operators hold the view that the Morse code requirement is obsolete and possibly an impediment to the future growth of amateur radio.

The primary focus of the FCC should be to ensure that a sufficiently large and qualified body of amateur radio operators will be there when desirable. Therefore, it would seem that more, not less amateur radio operators would be needed. Unfortunately, the total number of amateur radio licensees has recently seen a slight decline in the total

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<sup>14</sup> Petition by Eric R. Ward. Received 30 July 2003.

[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514383306](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514383306)

<sup>15</sup> Petition by Kiernan K. Holliday. Received 21 July 2003.

[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514287995](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514287995)

<sup>16</sup> *Id.*

number of radio licensees from 678,473 in June 1997 to 661,960 in October 2005.<sup>17</sup> Assuming those figures are accurate, they are not necessarily alarming, but nor are they particularly reassuring. The inherently diffused nature of amateur radio means that technological advances in centralization do not apply. Given the seeming increased frequency of natural disasters and the ever-looming threat of terrorist attack, more, not slightly fewer or even the same amount of amateur radio operators would seem to be required.

In the 19<sup>th</sup> century, Morse code was a revolution that, for the first time, allowed virtually instantaneous communication across great distances. When wireless was developed, Morse continued to play a larger role. While today Morse code is not completely obsolete, and admittedly can be used in certain instances where no other form of communications will work, its relevance today is not what it once was. In fact, around the time of the 1999 changes to amateur radio licensing, one FCC analyst was quoted as saying “Morse is *not* a modern area of communications....[t]here are still maritime frequencies where people communicate through telegraphy, but it’s no longer part of any Government safety program.”<sup>18</sup> The article noted that even the United States military and Coast Guard had eliminated Morse code in their operations.<sup>19</sup>

Even some of its enthusiasts describe Morse code as “a lovely old skill, like navigating by the stars.”<sup>20</sup> While Morse is an important part of the history of telecommunications, it will likely be less and less relevant in the future. Those who oppose the FCC’s proposed elimination of the Morse requirement often point to the fact

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<sup>17</sup> <http://www.speroni.com/FCC/Licenses.html> (the number did peak at 687,860 in April 2003).

<sup>18</sup> Catherine Greenman, “Morse Code Hams Let Their Fingers Do the Talking.” *New York Times*, 12 Aug 1999 (emphasis added). The quote of from William Cross, a program analyst with the FCC.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* The quote is from Tom Standage, author of the book *The Victorian Internet*.

that Morse signals can sometimes get through when voice or other forms of communication cannot. In that sense, Morse is like navigating by the stars. It is a method of getting one's goal accomplished in the most unlikely circumstances, but that method is conducted in a language that is foreign to most people.

By analogy, GPS may be the current preferred way to find directions, and if that system is not available, most people can still read a compass. Only in the extraordinary event that those methods fail would navigation by the stars be needed. Therefore, yes, Morse would possibly be of use if the main lines of communication (land and cell phones, the internet, etc) fail and the regular modes of amateur radio (voice) did not work for some reason. In the relatively small physical area that was damaged or destroyed in New York City after 9/11, the voice transmitting capability of amateur radio was apparently not affected. As far as I know, there was not a wholesale failure of voice capability on amateur radio after Katrina despite the broad geographic scale of the destruction. As a result, the likelihood of a massive failure of voice transmitting capacity over a large geographic area is so small that requiring Morse cannot be justified if it scares away people who otherwise might be interesting in amateur radio. Assuming it is a good idea to keep people interested in amateur radio and to get new people involved in that necessary service, retaining a mostly obsolete requirement would not serve that goal well.

While I hold a history degree, and am personally interested in many things old and no longer in style, I feel I would be less likely to consider becoming an amateur radio operator if I had to learn Morse code. Requiring would-be operators to learn a language with little to no expectation of use is simply a burden. Keeping citizens interested in

amateur radio will likely get more and more difficult as new technologies emerge seemingly every day that might distract potential amateur radio enthusiasts. Being closely identified with the quaint and storied Morse code might make amateur radio seem hokey and unappealing to future generations needed to man their radios in the emergencies that are almost certain to occur.

### **Conclusion**

This debate is case of where the removal of agency regulation will actually help accomplish the agency's goal. It might be nice to have the almost 700,000 amateur radio operators and any future enthusiasts in the medium fully versed in Morse in the remote possibility that no other form of amateur radio would be available. In reality, maintaining a requirement that is losing support amongst amateur operators in both the United States and around the world may prove to be in impairment to the overall health of amateur radio. Because the FCC's mission should be to facilitate the expansion of qualified amateur radio operators, the agency should adopt its NPRM and remove the Morse code requirement for licensing of amateur radio operators.

Respectfully submitted,



Todd Campbell