

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

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| In the Matter of                         | ) | WT Docket No. 98-143 |
|  | ) |                      |
| 1998 Biennial Regulatory Review --       | ) | RM-9148              |
| Amendment of Part 97 of the Commission's | ) | RM-9150              |
| Amateur Service Rules.                   | ) | RM-9196              |
|  | ) |                      |

To: The Secretary,  
Federal Communications Commission

cc: Chairman William E. Kennard  
Commissioner Susan Ness  
Commissioner Michael Powell  
Commissioner Harold Furchgott-Roth  
Commissioner Gloria Tristani

**REPLY COMMENTS OF NO CODE INTERNATIONAL  
IN WT. DOCKET NO. 98-143**

No Code International ("NCI"), on behalf of its Members, by its Board of Directors, and pursuant to the Commission's Public Notice in the above-captioned matter, hereby submits its reply comments in the above-captioned proceeding.

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## I. INTRODUCTION

1. NCI is a not-for-profit organization of licensed radio amateurs, which has as a major goal the global elimination of all requirements for Morse code proficiency for any class of amateur radio license. NCI was founded in 1997 and is experiencing rapid growth, both within the U.S. and internationally. While NCI has an international membership and global goals with respect to Morse testing requirements, a majority of its members and Directors are currently U.S. licensed radio amateurs. NCI is an interested party in this proceeding.

## II. EXECUTIVE SUMMARY

2. Since the December 1, 1998 close of the comment period in this proceeding, NCI has undertaken and completed a rather exhaustive analysis and categorization of all of the comments filed in this Proceeding which the Commission has made available to the public by way of its Electronic Comment Filing System (“ECFS”).

3. This analysis reveals quite conclusively (and we believe any reasonable, unbiased evaluation of the comments could only arrive at the same conclusion) that a substantial majority of the comments filed (63.6% ... nearly 2/3) support either the proposal NCI made to the Commission by letter prior to the release of the NPRM in this Proceeding (43.3%), the similarly-presented proposal of the ARRL (20.3%), or some very minor variant of the ARRL proposal.<sup>1</sup>

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<sup>1</sup> Those comments which proposed essentially a minor variation of the ARRL’s proposal are categorized in NCI’s analysis as “supporting the ARRL proposal” and included in its percentages.

4. A modest minority (36.5%) of those commenting stubbornly insist that there must be no change at all in the number of amateur license classes or code test speeds currently required, or even more intransigently suggest that the Commission enact increases in Morse testing speeds and place greater emphasis on Morse testing in the licensing process.

5. However, those minority comments which insisted upon the maintenance of today's convoluted system of license classes and continued high-speed Morse testing requirements *universally* failed to provide *any* compelling, rational reason *why* such outdated and restrictive requirements should be maintained.

6. The Commission should recognize that this traditionalist minority is simply out of touch with today's world and the needs of the ARS and such comments should be dismissed by the Commission as non-responsive to the stated purpose and intent of the instant Proceeding ... the streamlining and modernization of the ARS ... as well as inconsistent with the Commission's Congressional mandate to eliminate unnecessary regulations to the maximum extent possible and reduce regulation to the minimum necessary in those cases where the Commission finds that some degree of regulation legitimately remains necessary.

7. The single most important fact which derives from the analysis of the comments filed in this Proceeding is that, *for the first time in the history of the ARS*, a significant majority (63.6%) of the current licensees support both a reduction in the maximum number of license classes to either three or four, with *at least* full General class privileges being attained with either no Morse code test at all or, at most, the passage of only a 5 word per minute Morse code test. This conclusion is based on the combination of comment supporting NCI's proposal (43.3%) and those supporting the ARRL proposal (20.3%).

8. NCI believes that it is also quite significant to note that support for NCI's proposal exceeded support for the ARRL's proposal by a factor of more than 2 to 1 (43.3% of comments filed supported NCI's proposal vs. 20.3% for the ARRL proposal) and that many writers *specifically* made a point of stating that "The ARRL doesn't speak for or represent me."

9. NCI also believes that it is worthy of note that over half (54.2%) of the comments supporting the ARRL proposal came from Novice, Technician, and Technician Plus licensees, along with a small number of comments where the writer's license status could not be determined from the filing.

10. When one considers that the ARRL flatly refused to even publicly acknowledge the existence of NCI's alternative proposal to the Commission<sup>2</sup>, it seems reasonable to suspect that, had those Novice, Technician, and Technician Plus licensees who supported the ARRL proposal known of NCI's more favorable (to their interests) proposal, many of them may well have supported NCI's proposal instead of the ARRL proposal, making the margin of support for NCI's proposal over that of the ARRL proposal even greater.

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<sup>2</sup> NCI publicized both its own proposal and that of the ARRL to its membership and to the amateur community at large by means of its website and e-mail bulletins to members ... the ARRL's website and publications, however, stated "*The ARRL and the FCC both have proposals 'on the table' for restructuring and simplifying the licensing structure of the Amateur Radio Service.*" This implication that there were ONLY two options available (ARRL/FCC NPRM) quite likely contributed to a lower public awareness of the alternative proposal submitted by NCI than would have been the case had the ARRL openly acknowledged the simple fact that NCI's alternative proposal existed.

11. The second most important fact revealed by such an analysis is that many of those commenting in this majority also supported NCI's proposal that, should the Commission find it necessary to retain any Morse code testing at all in the interests of interim compliance with S25.5 of the ITU Radio Regulations, that such testing should consist of a single test at a speed of not more than 5 wpm, and that the wording of such Rules as may be promulgated in a Report and Order stemming from this Proceeding should include a "sunset clause" which would automatically eliminate ALL Morse testing requirements (without the further delays and administrative burden on the Commission of revisiting this matter in yet another NPRM in the near future) once the Morse testing requirements of S25.5 are deleted from the ITU Radio Regulations (an event which is expected to take place at an upcoming World Radio Conference ("WRC") in the year 2000 or 2001).

12. The body of comments filed in this Proceeding clearly demonstrate that there is a significant consensus in the amateur community which agrees with the Commission's NPRM statements that there is "too much emphasis (being placed) on Morse code proficiency" in the Commission's current Part 97 Rules for the ARS.

13. The body of comments filed in this Proceeding also clearly demonstrate that the majority of currently-licensed amateurs favor either the outright elimination of Morse code testing or a significant reduction in code test speeds and the level of importance placed on such testing as a prerequisite to obtaining amateur licenses which grant significant, meaningful privileges in the bands below 30 MHz.

14. As NCI stated in its timely-filed comments in this Proceeding, this Rulemaking Proceeding presents the Commission with an important opportunity to restructure and redirect the ARS in ways that will revitalize it and realign it with the technical realities of today's world. Such revitalization and realignment are absolutely necessary to assure that the ARS will be capable of meeting its public service and technical training objectives<sup>3</sup> in the future.

15. NCI reiterates its belief that the Commission has a compelling public interest mandate, both to maintain a healthy Amateur Radio Service, and to eliminate, to the maximum extent possible, unnecessary or arbitrary rules that limit access to, full participation in, and freedom of experimentation in, the ARS. Such changes will both prepare and permit the ARS to move forward into the 21<sup>st</sup> Century as a valuable public service and technical training asset to the nation.

16. NCI again encourages the Commission to modernize its Rules for the ARS by enacting new rules for the ARS which:

- a. eliminate, to the maximum extent possible, Morse testing as a requirement for all amateur licenses,<sup>4</sup>
- b. reduce the number of license classes to no more than three, and

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<sup>3</sup> As outlined in §97.1 of the Commission's Rules, entitled "Basis and Purpose".

<sup>4</sup> In no event should there be a Morse test requirement of more than 5 wpm for any license class, including those conveying full privileges in the bands below 30 MHz, and then only until S25.5 is removed from the ITU Radio Regulations.

- c. review the privileges afforded to each license class and make certain that all test requirements for each license class *rationally and directly* relate to the privileges the licensee receives by virtue of passing the test.

17. These changes would revitalize the ARS, promote growth in a stagnant, declining ARS, help make the ARS a more valuable public service asset to the nation, and, at the same time, reduce the Commission's administrative burden associated with an unnecessarily complex and convoluted licensing system (the most complex in the world) where upgrading to a higher class license demands demonstration of arbitrary and unnecessary levels of Morse code proficiency and the privileges granted by a particular license class have little or nothing to do with the tests one must pass to obtain them.

18. In the interest of continuity with the present licensing structure, study guides, and testing materials, NCI again recommends that the three license classes be called "Technician," "General," and "Extra." This will permit a practical combination of existing study guides and testing materials to be used until such time as such materials are revised and will result in reasonable tests for the three new classes of license contemplated in these comments.

19. NCI also reiterates its recommendation that the transition to the new license structure be accomplished in the following manner:

- a. existing Technician class licensees should remain as "Technician" class licensees, until they upgrade by passing the necessary element(s) for the new "General" class,
- b. existing Novice licensees should be permitted to upgrade to the new "General" class license by taking the additional written element(s) necessary for that class,

- c. existing "old" Technician Plus licensees (those who have previously passed the full General written examination) should be grandfathered to the new "General" class,
- d. existing "new" Technician Plus licensees (who have not taken the full General class written examination) should be able to upgrade to the new "General" class by taking the additional written test element necessary for the General class, and
- e. existing Advanced class licensees should be permitted to upgrade to the new "Extra" class license by taking the additional written elements necessary for that class.
- f. finally, existing Novice, "new" Technician Plus, and Advanced class licensees needing to take additional written element(s) to upgrade to the new General or Extra class should be afforded an interval of at least two years from the effective date of such new Rules to pass the necessary upgrade test element(s) and should retain their current class of license and all current privileges in the interim. This would afford ample opportunity for all who desire to upgrade, would assure that nobody is unfairly deprived of earned privileges, yet would totally eliminate the Commission's administrative overhead associated with the Novice, Technician Plus, and Advanced classes in a relatively short period of time.

20. NCI also reiterates its previous request and recommendation that the Commission direct the Wireless Telecommunications Bureau to commence a broad Notice of Inquiry seeking comment from the public on what portions of Part 97's technical and operational regulations constitute unnecessary barriers to technical advancement and experimentation in the ARS in light of today's technology.<sup>5</sup> *This NOI should be treated as a separate proceeding with its own, longer timetable so as not to interfere with the rapid resolution of the very important issues under consideration in the instant Proceeding.*

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<sup>5</sup> The recommended NOI is needed to address matters of a technical nature (occupied bandwidth restrictions, baud rate limitations, unnecessary limitations on the use of and experimentation with modern modulation and coding schemes, etc.) which currently unnecessarily hamstring and thwart the experimentation with and adoption of new modes and technologies which could greatly increase the utility, reliability, and spectral efficiency of amateur operations... in the bands below 30 MHz as well as the bands above 30 MHz.

### III. REPLIES TO SPECIFIC COMMENTS

21. Reply to the comments of the ARRL ...

- a. The comments of the ARRL in this Proceeding seem, at first glance, to be a bold and progressive step for the ARRL, considering its past history of being a primary bastion of the "Morse forever at all costs" camp.
- b. However, upon closer examination it becomes quite transparent that the ARRL's original proposal to the FCC (as presented in letter form shortly prior to the Commission's release of the NPRM in this Proceeding) was actually *designed and intended to advance a goal of maintaining as much emphasis on Morse code testing at as high a speed as the ARRL believed it might possibly persuade the Commission to retain.*
- c. The ARRL's more recent addition to its proposal ... the suggestion that Technician class licensees (who have not passed any Morse test) be given Morse (*only*) privileges in the General class sub-bands simply eludes logic and crosses well over the line into the ludicrous.
- d. The ARRL effectively asserts that S25.5 of the ITU Radio Regulations "requires" Morse testing for access to the bands below 30 MHz (*if the operation involves telephony or modern digital modes*), but that (somehow) it is "OK" to *ignore S25.5 if the operation is restricted to Morse telegraphy.* This effectively asks to "have it both ways."

- e. If Morse testing is unnecessary for Morse operation, it is *certainly* unnecessary for operation using modes having *absolutely nothing* to do with Morse proficiency.
- f. This illogical contrivance points out both the thinly-veiled Morse bias of the ARRL and the absolute absurdity of keying privileges in other modes having nothing to do with Morse to the passage of Morse tests.
- g. While NCI *fully supports* the concept that the Commission would be well-advised to simply ignore S25.5 and *totally eliminate Morse testing as a prerequisite for any amateur license*, we find the ARRL's proposal to permit Morse code use in the bands below 30 MHz without passage of a Morse test, while disallowing the ability to employ other modes until one has passed a Morse test, to be an attempt to abuse the government's regulatory powers to promote and maintain what amounts to nothing more than a fraternity hazing ritual.
- h. This entire proposal from the ARRL is little more than a transparent attempt to maintain code testing as a "hoop one must jump through" to obtain full amateur privileges, as well as a means to promote more widespread use of Morse telegraphy in a desperate attempt to artificially generate more usage of Morse telegraphy for the purposes of bolstering the appearance of a "need" for continued maintenance of Morse testing at higher speeds.
- i. NCI does not believe that it is appropriate for the Commission to be "in the business of" supporting and maintaining such fraternity hazing rituals by government regulatory fiat, nor do we believe that is *this* Commission's desire or intent.

- j. Finally, *nowhere* in the ARRL's proposal or its comments in the Proceeding, does it *ever* provide a *single* rational or compelling reason *why* Morse testing must be continued as a licensing requirement at all.
- k. In summary, the ARRL proposal, despite in some respects being a step in the right direction, does not go nearly far enough and appears in the final analysis to be an attempt to actually limit, rather than promote, streamlining and modernization in the ARS while attempting to promote the maintenance of Morse testing at speeds and levels of "importance" that are inconsistent with the best interests of the ARS and its ability to best serve the public interest, convenience, and necessity in the coming century.

22. Reply to the comments of Philip M. Kane ...

- a. Mr. Kane's comments contain a number of good ideas. Most of which NCI can support.
- b. First, Mr. Kane supports a system having only two license classes. Were the Commission to *totally eliminate* Morse testing, there would be *no need* for the technician class (as a no-code entry level class). With an appropriately rigorous, yet still reasonably entry-level, written test, a system of two license classes might well be acceptable to at least a significant portion of NCI's membership. (The Commission is reminded that CEPT has only two license classes, as do many of the remaining nations of the world.)

- c. Second, Mr. Kane suggests that Morse testing be eliminated or reduced to 5 wpm. NCI clearly would support the first concept as being preferable, with the alternative of a single 5 wpm Morse test (if the Commission feels compelled to comply with S25.5 until it is removed from the ITU Radio Regulations) being an acceptable compromise, as long as it is accompanied by a "sunset clause" which automatically ends all Morse testing concurrent with the elimination of the S25.5 requirement for Morse tests from the ITU Radio Regulations.
- d. Third, Mr. Kane recommends that there be no regulatory distinction made between modes of transmission. This point would likely gain mixed, but significant support amongst NCI's membership, and it should be pointed out that this is the norm in the rest of the world and no real harm seems to have come from the lack of restrictive sub-band-by-mode limitations such as those currently embodied in the Commission's Rules.
- e. Fourth, Mr. Kane suggests that examination procedures be "revised to require knowledge in lieu of rote memorization." While NCI supports the concept of improved testing and, as stated in its previously-filed comments, has serious concerns over the decline in technical competence amongst incumbent licensees, we believe that the comments filed by the National Conference of VECs ("NCVEC") adequately address these concerns and that the NCVEC will be quite able to improve the testing system under the 3 class, single 5 wpm (maximum) Morse test, system which both NCI and NCVEC have advocated. (It should also be noted that much of the material

tested ... rules, regulations, band edges, etc. ... can only be learned by rote memorization ...in those instances the argument against rote memorization is moot.)

- f. Mr. Kane urges the Commission to "consider resuming obligation to give examinations." NCI believes that this is unnecessary because the VEC system has been successful and is by no means the "failure" or "hotbed of corruption" that some imply. NCI also recognizes that, even if there were some shortcoming in the VEC system (which is not something we believe) that the Commission, with its limited budget and staff, lacks the resources to provide anything remotely approaching the number of test session opportunities provided through the VEC/VE program. A major reduction in the number of testing locations and opportunities would have a very negative impact on the amateur community. NCI fully supports the continuation of the VEC/VE program and is confident in the ability of the NCVEC to respond to the impending restructuring of amateur licensing in a positive and effective manner.
- g. Mr. Kane urges the Commission to resume an active amateur enforcement program. NCI could not agree more. After stagnation caused by outdated rules and regulations, the most serious problem facing the ARS is a decline in behavior and compliance by a minority who have come to believe that "the FCC doesn't enforce the rules any more." NCI also urges the Commission to take measures to deal firmly and decisively with those who violate the Commission's Rules and act as scofflaws.

23. Reply to the comments of the Quarter Century Wireless Association ("QCWA") ...

- a. With respect to the restructuring and simplification of license classes and Morse testing requirements, NCI finds the comments of QCWA to be, effectively, a hybrid of the NCI and ARRL proposals.
- b. However, we find no rational justification in the comments of QCWA for the retention of a 12 wpm Morse test as a requirement for the Extra Class license and can, therefore, only conclude that this recommendation by QCWA is solely based on the fact that their membership is inherently composed of long-time amateurs who desire to cling to higher speed Morse testing on the basis of tradition.
- c. Again, we believe that the maintenance of traditions by governmental regulatory fiat is not a legitimate use of the Commission's regulatory powers. NCI therefore objects to and opposes QCWA's recommendation for a 12 wpm Morse test for the Extra Class license.

#### IV. CONCLUSION

24. The majority of comments (63.6%) submitted in this proceeding support either a 3 or 4 class system of licensing with at least General class privileges with, at most, a 5 wpm Morse test. A substantial body of comments (43.3%) support the total elimination of Morse testing as soon as practical and a reduction to no more than 3 classes of license.

25. NCI believes that no more than 3 classes of license can be justified and finds no compelling reason whatsoever, either in the comments in this Proceeding or in logic, for any Morse test beyond a maximum of 5 wpm (and that only on a temporary basis if the Commission deems it necessary to maintain interim compliance with S25.5 of the ITU Radio Regulations).

26. While we have stressed the statistics of the comments filed, including the fact that NCI's proposal garnered more than twice the support of the ARRL proposal, our purpose in doing so has been only to stress to the Commission that there IS, in fact, a majority consensus in the amateur community in favor of changes in line with those which we have proposed to the Commission in our pre-NPRM-release letter proposal and in our comments in this proceeding.

27. However, in the final analysis, the decisions the Commission makes in this proceeding should not be solely based on a popularity-contest-like "poll" of the incumbent ARS licensees.

28. NCI believes that the Commission has both a Congressional and a public interest mandate to enact the changes which NCI has proposed:

- a. eliminate, to the maximum extent possible, Morse testing as a requirement for all amateur licenses,
- b. reduce the number of license classes to no more than three,
- c. review the privileges afforded to each license class and make certain that all test requirements for each license class rationally and directly relate to the privileges the licensee receives by virtue of passing the test, and

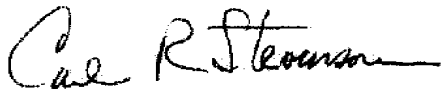
- d. remove, wherever possible, unnecessary and arbitrary barriers to entry into and full participation in the ARS by individuals who demonstrate reasonable, relevant technical and rules-awareness qualifications for licensing.

29. Only by enacting such changes can the Commission revitalize the ARS in the manner it so desperately needs to assure its growth, viability, and public interest and public service value into the coming century.

30. We sincerely hope that the Commission will act in both the public interest and the interest of the ARS by enacting the requested changes in its Rules in an expeditious manner.

Respectfully submitted,

No-Code International, by



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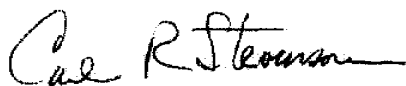
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(Member of the Board of Directors as delegated and approved by the Board as a whole)

CERTIFICATE OF SERVICE:

On Aug. 10, 1998, the Commission released the text of the NPRM in WT. Docket No. 98-143. The public comment period ended on Dec. 1, 1998, with reply comments due by Jan 15, 1999. Therefore these reply comments are timely filed.

On Jan 13, 1999, I mailed a true and accurate copy of this document (described as "REPLY COMMENTS OF NO CODE INTERNATIONAL IN WT. DOCKET NO. 98-143") to ARRL General Counsel Christopher D. Imlay, of the Law Firm of BOOTH, FRERET, IMLAY & TEPPER, P.C., 5101 Wisconsin Avenue, N.W., Suite 307, Washington, DC 20016; Mr. Philip M. Kane, Principal Attorney, Communications Law Center, P.O. Box 280192, San Francisco, CA 94128-0192; and Mr. Gary Harrison, President, QCWA, P.O. Box 467, Bolivar, MO 65613 as required by Sections §1.47 and §1.405 of the Commission's Rules (47 C.F.R. §1.47, 47 C.F.R. §1.405).



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(for the Members and Directors of NCI as delegated by the Board of Directors)