

DIRECT LICENSING IN THE SAFETY AND SPECIAL AND EXPERIMENTAL RADIO SERVICES OF ALIENS, OR ENTERPRISES WITH ALIEN OFFICERS, DIRECTORS OR STOCKHOLDERS

APRIL 30, 1974.—Ordered to be printed

Mr. PASTORE, from the Committee on Commerce,
submitted the following

REPORT

[To accompany S. 2457]

The Committee on Commerce, to which was referred the bill (S. 2457) to amend sections 303 and 310 of the Communications Act of 1934 to permit the Federal Communications Commission to grant radio station licenses in the safety and special and experimental radio services directly to aliens, representatives of aliens, foreign corporations, or domestic corporation with alien officers, directors, or stockholders, and to permit aliens holding such radio station licenses to be licensed as operators, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE AND SUMMARY OF LEGISLATION

The purpose of this legislation is to amend section 310 of the Communications Act of 1934, as amended, to permit direct licensing of aliens and corporations with certain alien officers, directors or stockholders rather than licensing them indirectly under subsection 310(a)(5) of the Communications Act of 1934, as amended, which has been utilized to set up a subsidiary corporation, with no alien officers or directors, to be the radio licensee. This bill would make the present structure of the law more equitable with respect to individuals and partnerships who do not have the subsidiary corporation route available to them to secure a radio license.

The legislation affects only those radio licenses in the Federal Communications Commission's Safety and Special Radio Services. These encompass a myriad of business and industrial uses of radio as an incident to doing business. Comparable changes are made in section 303 of the Act to operator provisions so that an alien who can receive

a station license can also be licensed to operate the radio equipment. The bill makes no change in the prohibition against licensing aliens in the broadcast or common carrier radio services.

Finally, S. 2457 deletes the requirements in sections 303 and 310 of the Act that the FCC follow certain prescribed procedures to make an intra-government security check on aliens who apply for permission to operate their amateur radio stations in the United States pursuant to a bilateral agreement extending such privileges to United States citizens on a reciprocal basis. The FCC reports that, after ten years of experience with the clearance procedures, it has found them to be cumbersome, timeconsuming, and unnecessary. Moreover, the Commission would continue to have the flexibility to deny any such application if the public interest so requires.

NEED FOR LEGISLATION

S. 2457 would amend section 310 of the Communications Act to permit the Commission to grant radio station licenses in the Safety and Special and Experimental Radio Services directly to aliens or entities with alien interests, such as foreign corporations and domestic corporations with alien officers, directors, or stockholders. Presently, subsection 310(a) of that Act is a general prohibition on the grant of radio station licenses to aliens, representatives of aliens, foreign corporations, or domestic corporations with alien officers, directors, or stockholders.

However, paragraph (5) of that subsection provides a way of indirectly licensing a corporation with alien interests. Those corporations now barred from holding licenses in their own names may obtain the benefits of using radio in their business by forming a subsidiary corporation in which all officers and directors are United States citizens. This subsidiary corporation may then be granted a license to provide the communication service needed by the parent corporation. S. 2457 proposes to eliminate this expensive and unnecessary device whereby corporations create "all-American" subsidiaries merely to be granted a radio license for the use of the parent corporation.

This limited permission in 310(a)(5) is inherently unfair to the small corporation without the resources or know-how to establish a subsidiary corporation that meets the requirements of law for the sole purpose of obtaining a radio license. It is also unfair to partnerships or individual entrepreneurs to whom this procedure is not available. The need for the license is independent of the size or the form of an organization. In addition, there is a needless expense and burden upon the corporations which are able to avail themselves of the provisions of paragraph (5) of subsection 310(a). The direct licensing of aliens in these safety, special and experimental services seems far preferable to the existing statutory scheme.

The legislation is aimed primarily at the accessory or incidental use of radio as an integral part of the conduct of much industry and commerce in the United States. For example, railroads, taxicabs, manufacturers, oil producers and distributors, utility companies, pipelines, truckers, construction companies, the mining industry, the forestry in-

dustry, consumer service companies, retailers, farmers, ranchers, and the marine industry find that radio is necessary for efficient and safe operation of the primary business.

There are also substantial reasons for permitting aliens to have licenses to use radios in all of the safety and special services established by the Commission and not just in those which are industry-oriented. In both the aviation and marine radio services, the underlying need for radio for safety purposes is present without regard to citizenship. Citizens radio may be used not only for business purposes, but also in motor vehicles and aboard pleasure boats for substantial messages. The Commission, effective July 1970, reserved citizens radio Channel 9 exclusively for emergency communications or communications necessary to assist a motorist. The availability of a citizens radio license to an alien can benefit not only the alien but also the general public because the licensed alien would then be able to summon aid in an emergency situation. In addition, radio is a safety factor as well as a convenience in such activities as hunting, fishing, camping and hiking.

The bill would also amend section 303 of the Communications Act to permit an alien to be licensed as the operator of the station for which he has been granted a license under section 310. Most of the safety and special radio services require only a station license and not a separate operator license. However, for several categories of stations, such as ship stations and aircraft stations, the station must be licensed and the operator also must have an operator license. The purpose of permitting station licenses to be granted to aliens would be substantially thwarted if an alien could obtain a station license but then was barred from obtaining a license to operate it solely because he was an alien. Under the legislation, therefore, aliens who are authorized to have radio station licenses would be eligible to have the operator license required to operate the station. Aliens who are not station licensees would not be eligible for operator licenses.

The legislation makes explicit that aliens, and corporations with the proscribed alien officers, directors, or stockholders, are prohibited from being licensed in the broadcast or common carrier radio services. The FCC has advised your committee that, for purposes of this legislation, public coast stations, which essentially inter-connect ship communications with land based common carrier communications systems, will be considered as common carrier activities and, therefore, not available to aliens.

Despite the general prohibition on granting a license to an alien, Congress has on several previous occasions recognized the need of aliens for certain radio uses outside the broadcast and common carrier fields.

When the Communications Act was enacted in 1934, it included an exception which permitted the Commission to license "radio apparatus on board any vessel, aircraft, or other mobile station of the United States when the installation and use of such apparatus is required by Act of Congress or any treaty to which the United States is a party."

The Act was amended in 1958 to add another exception to the prohibition on alien licenses. Concern with air safety prompted the Congress to permit the Commission to license aircraft stations to aliens who hold United States pilot certificates or a foreign pilot certificate

which is valid in the United States by reciprocal agreement. As recently as 1971, the Congress amended the Act to permit licensing in the Amateur Radio Service to aliens who have filed declarations of intention to become citizens of the United States. S. 2457 would end this trend of exceptions to the general prohibition applied to aliens.

This legislation appears consistent with the legislative history of subsection 310(a), which mainly centers on the prevention of alien control of our commercial communications systems, specifically in the broadcast and common carrier fields. But the businesses affected by this legislation are not the commercial communications systems which the Congress sought to protect in 1934. Nor does the private use of radio incidental to these businesses threaten control of the communications systems of the United States.

Finally, the legislation deletes the requirements in sections 303 (for operators licenses) and 310 (for station licenses) of the Act that the FCC follow certain prescribed procedures to make an intra-government security check on aliens who apply for permission to operate their amateur radio stations in the United States pursuant to a bilateral agreement extending such privileges to United States citizens on a reciprocal basis.

The amateur service is a voluntary noncommercial communication service that fosters technical contributions to the advancement of the radio art and international goodwill and has often proved invaluable during emergencies.

Since 1964 alien amateurs have been permitted under subsection 310(a) to operate their amateur radio stations in this country under reciprocal agreements. Under this procedure, alien amateurs licensed by countries with whom the United States has reciprocal licensing agreements, may obtain authority to operate in the United States, usually without the necessity of passing an amateur examination in this country. The legislation retains the reciprocal authorization arrangement now provided for in the penultimate paragraph of present subsection 310(a).

If, while authorizing the licensing of aliens in the safety and special radio services, we deleted the reciprocal authorization arrangement from section 310, those alien amateurs would then be required to take examinations prior to obtaining authority to operate here. Language difficulties and other problems might make the examination an insurmountable barrier to many aliens. Their inability to obtain authorizations here might result in reciprocal action against United States amateurs seeking authority to operate their stations in those foreign countries. Since the exception also benefits United States amateurs in foreign countries, it is desirable to retain this reciprocal arrangement. In this way an alien amateur could seek authorization here either under the reciprocal authorization provision or as a regular applicant. On the other hand, alien amateurs from countries with whom the United States does not have a reciprocal agreement would have to apply in the regular manner and, for the first time, would be eligible and not barred by virtue of their alien status.

The Federal Communications Commission advises that its experience in issuing licenses to corporations and to pilots and in issuing authorizations to alien amateurs on a reciprocal basis under 310(a)

and its knowledge of the kinds of service for which aliens would be eligible under this legislation, indicate that the use of radio in the safety and special and experimental services will not raise security problems. The Commission reported it is unaware of any security problems which have resulted from the alien operations which the Commission has permitted under the existing exceptions to 310(a). The radio facilities authorized in the safety and special services, with the exception of ship, certain coast, amateur and certain aeronautical land stations, are generally limited to relatively short-range communications. In addition, almost all frequencies used by these stations are shared with others and are monitored by other licensees who wait for their turn to use them. There is thus little, if any, secrecy afforded transmissions. It seems doubtful that anyone would attempt to use such shared frequencies to breach the national security or indeed that anyone intent upon such a use would be inhibited by the lack of a license.

Moreover, aliens permitted to enter the United States are screened for security before they are granted visas. Accordingly, S. 2457 does not include any procedures for security checks on alien applications. For the same reasons, the current requirement that the Commission notify appropriate other agencies of the Government of the receipt of an application for an alien amateur authorization and afford them the opportunity of furnishing it with any information bearing on the national security is deleted. The Commission states that, after ten years of experience operating under these procedures, it has found that they are cumbersome and time-consuming, as well as unnecessary. Your committee notes that, under the public interest mandate of the Communications Act, the Commission would retain flexibility to deny any such application if the public interest so requires.

COMMITTEE HEARINGS

This bill was introduced by Senator Warren G. Magnuson, chairman of the committee, and Senator Norris Cotton, ranking minority member, at the request of the Federal Communications Commission. The Subcommittee on Communications held hearings on this legislation on March 25, 1974. Federal Communications Commission Chairman Richard E. Wileys, testified in support of the proposal.

In a letter to the subcommittee, Mr. W. W. Locke, Secretary-Treasurer of Communications Services Association, stated his corporation's support of the legislation, noting that Communications Services Association was formed by Crown Zellerbach Corporation solely for the purpose of obtaining safety and special radio service licenses under subsection 310(a) (5) of the Communications Act for its operations. He further stated that under the existing provisions of the Act, Crown Zellerbach Corporation is presently unable to secure such licenses directly in its own name because one of its officers is a Canadian national, and that the procedure available under subsection 310(a) (5) is a "costly, burdensome and generally unsatisfactory arrangement". A letter from Donald M. Barton, Esq., General Counsel of Whitney-Fidalgo Seafoods, Inc., also urged adoption of the legislation. These letters are included in the Appendix to this Report.

AMENDMENT

In a written statement to the subcommittee by Charles R. Cutler, Esq., on behalf of Aeronautical Radio, Inc. (ARINC), it was urged that the bill be amended to specifically prohibit alien licensing in the "aeronautical enroute or aeronautical fixed," radio services. ARINC stated that the aeronautical stations are not "shared" as in the case of land mobile stations and, with unimportant exceptions, have been licensed since 1939 to ARINC as the communications company of the airline industry for the purpose of providing aeronautical fixed or aeronautical enroute radio services to all aircraft operators, scheduled or nonscheduled, foreign or domestic, without discrimination and on a nonprofit basis. Emphasizing the unique position of these stations in serving overseas and foreign aircraft operations of all nations, ARINC submitted that the licensing of such facilities to aliens could create potential security and safety risks not present in alien licensing in the other safety and special radio services. In particular, it cited the fact that the aeronautical stations provide communications to aircraft on overseas and foreign air routes converging on the United States and can be useful for air navigation or for terminal weather forecasts, and that monitoring of such communications in foreign languages would be impractical. It also noted that the sensitive nature of these types of communications is evidenced by the practice in World War II of requiring the coding of aeronautical messages.

At the subcommittee hearings, the FCC agreed that the bill should be modified to provide for the specific prohibition of alien licensing with respect to aeronautical radio stations. No opposition to such revision was heard or noted.

In view of the above, your committee has adopted the following amendment:

At page 3, line 4, after the words "common carrier," insert the following: "or aeronautical enroute or aeronautical fixed".

CONCLUSION

Your committee believes that the passage of S. 2457, with amendment would substantially serve the public interest and be consistent with existing congressional policy in this area and with the needs of national security. It would further eliminate needless expense to corporations now necessitated by the "all-American" subsidiary approach to licensing, and remove existing inequities by providing similar benefits to alien individuals and partnerships. Moreover, in the non-business area, it would extend to aliens various uses of radio for safety purposes now denied to them. Finally, the legislation removes present intra-government clearance procedures from the law which have proved to be unnecessary and time-consuming to the Federal Communications Commission in dealing with alien amateurs operating under the authority of bilateral agreements.

COST ESTIMATE

Pursuant to section 252 of the Legislative Reorganization Act of 1970, the Committee estimates that enactment of this legislation will result in no additional cost to the Government.

The Committee knows of no cost estimate by any Federal agency which is at variance with its estimate.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill with amendment are shown as follows (new matter is printed in italic and deleted matter is enclosed in black brackets) :

COMMUNICATIONS ACT OF 1934, AS AMENDED

"SEC. 303. Except as otherwise provided in this Act the Commission from time to time, as public convenience, interest, or necessity requires shall—

* * * * *

(1) (2) [Notwithstanding section 301 of this Act and paragraph (1) of this subsection, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation on a reciprocal basis by United States amateur radio operators: Provided, That when an application for an authorization is received by the Commission, it shall notify the appropriate agencies of the Government of such fact, and such agencies shall forthwith furnish to the Commission such information in their possession as bears upon the compatibility of the request with the national security: And provided further, That the requested authorization may then be granted unless the Commission shall determine that information received from such agencies necessitates denial of the request. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.]

Notwithstanding paragraph (1) of this subsection, an individual to whom a radio station is licensed under the provisions of this Act may be issued an operator's license to operate that station.

(3) [Notwithstanding paragraph (1) of this subsection, the Commission may issue licenses for the operation of amateur radio stations to aliens admitted to the United States for permanent residence who have filed under section 334(f) of the Immigration and Nationality Act (8 U.S.C. 1445(f)) a declaration of intention to become a citizen of the United States: *Provided*, That when an application for a license is received by the Commission, it shall notify the appropriate agencies of the Government of such fact, and such agencies shall forthwith furnish to the Commission such information in their possession as bears upon the compatibility of the request with the national security: *And provided further*, That the requested license may then be granted unless the Commission shall determine that information received from such agencies necessitates denial of the request. Other provisions of this Act and of the Administrative Procedure Act shall not be ap-

pliable to any request or application for or modification, suspension, or cancellation of any such license.】

In addition to amateur operator licenses which the Commission may issue to aliens pursuant to paragraph (2) of this subsection, and notwithstanding section 301 of this Act and paragraph (1) of this subsection, the Commission may issue authorizations under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation on a reciprocal basis by United States amateur radio operators. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

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SEC. 310. (a) 【The station license required hereby shall not be granted to or held by—

【(1) Any alien or the representative of any alien ;

【(2) Any foreign government or the representative thereof ;

【(3) Any corporation organized under the laws of any foreign government ;

【(4) Any corporation of which any officer or director is an alien or of which more than one fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country ;

【(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one fourth of the directors are aliens, or of which more than one fourth of the capital stock is owned of record or voted after June 1, 1935, by aliens, their representative, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

【Nothing in this subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when the installation and use of such apparatus is required by Act of Congress or any treaty to which the United States is a party.

【Notwithstanding paragraph (1) of this subsection, a license for a radio station on an aircraft may be granted to and held by a person who is an alien or a representative of an alien if such person holds a United States pilot certificate or a foreign aircraft pilot certificate which is valid in the United States on the basis of reciprocal agreements entered into with foreign governments.

【Notwithstanding section 301 of this Act and paragraphs (1) and (2) of this subsection, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there

is in effect a bilateral agreement between the United States and the alien's government for such operation on a reciprocal basis by United States amateur radio operators: *Provided*, That when an application for an authorization is received by the Commission, it shall notify the appropriate agencies of the Government of such fact, and such agencies shall forthwith furnish to the Commission such information in their possession as bears upon the compatibility of the request with the national security: And provided further, That the requested authorization may then be granted unless the Commission shall determine that information received from such agencies necessitates denial of the requests. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

¶Notwithstanding paragraph (1) of this subsection a license for an amateur radio station may be granted to and held by an alien admitted to the United States for permanent residence who has filed under section 334(f) of the Immigration and Nationality Act (8 U.S.C. 1445(f)) a declaration of intention to become a citizen of the United States. *Provided*, That when an application for a license is received by the Commission, it shall notify the appropriate agencies of the Government of such fact, and such agencies shall forthwith furnish to the Commission such information in their possession as bears upon the compatibility of the request with the national security: *And provided further*, That the requested license may then be granted unless the Commission shall determine that information received from such agencies necessitates denial of the request. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or application for or modification, suspension, or cancellation of any such license.¶

The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof.

(b) No broadcast or common carrier or aeronautical enroute or aeronautical fixed radio station license shall be granted to or held by—

(1) any alien or the representative of any alien;

(2) any corporation organized under the laws of any foreign government;

(3) any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

(4) any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(c) In addition to amateur station licenses which the Commission may issue to aliens pursuant to this Act, the Commission may issue authorizations, under such conditions and terms as it may prescribe,

to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation on a reciprocal basis by United States amateur radio operators. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

[(b)] (d) No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 for the permit or license in question; but in acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.

AGENCY COMMENTS

Letter from the Comptroller General of the United States dated October 18, 1973, and letter from the Chairman of the Federal Communications Commission dated April 5, 1974.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., October 18, 1973.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: With respect to your letter requesting our comments on S. 2457, a bill to amend the Communications Act of 1934, as amended, to permit the Federal Communications Commission to grant radio station licenses in the safety and special and experimental radio services directly to aliens, representatives of aliens, foreign corporations, or domestic corporations with alien officers, directors, or stockholders; and to permit aliens holding such radio station licenses to be licensed as operators, this is to advise that we have no comments to offer.

Sincerely yours,

R. F. KELLER,
Deputy Comptroller General
of the United States.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., April 5, 1974.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: At the March 25, 1974 hearings on three bills which are part of the Commission's legislative program, you inquired whether the Office of Management and Budget and the Departments of State and Commerce had been consulted with respect to S. 2457, dealing with licensing aliens in the safety and special radio services.

The Office of Management and Budget advised the Commission on July 19, 1973, that there was "no objection from the standpoint of the Administration's program to the presentation of [the draft bill which was later introduced as S. 2457] to the Congress." I am informed that as part of the intra-governmental process, OMB consulted with, and received no objection from, the Departments of Justice and Commerce and the Office of Telecommunications Policy.

Sincerely yours,

RICHARD E. WILEY, *Chairman.*

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