

only is a stamp honoring these worthy men long overdue, but in a few years there will be little point in issuing such a stamp, for all the veterans of the Spanish-American War will be gone. Of the 400,000 volunteer Army that went to war in 1898, there are now only about 2,000 left.

For years, the Post Office has been petitioned to issue a stamp honoring the Spanish War veterans. But year after year, the postal people have put off these petitions by stating that the matter is under consideration. I really fail to see that there is anything left to consider. Surely, there is no more distinguished group of patriots than these remaining veterans. The Post Office has issued stamps on nearly everything under the sun, but for some reason has not seen fit to honor the veterans of the Spanish-American War. It is high time it did so.

I ask unanimous consent to print the text of the bill in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1477

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Postal Service is authorized and directed to issue a special postage stamp in honor of the veterans of the Spanish American War. Such stamp shall have a denomination of 8 cents, shall bear such design as the United States Postal Service shall determine, and shall be first placed on sale on such date and shall be sold thereafter for such period as the United States Postal Service shall determine.*

By Mr. MAGNUSON (by request):

S. 1478. A bill to amend the Communications Act of 1934, as amended, with respect to commissioners and Commission employees. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, I introduce by request, for appropriate reference, a bill to amend the Communications Act of 1934, as amended, with respect to commissioners and Commission employees, and ask unanimous consent the letter of transmittal and statement of need be printed in the RECORD with the text of the bill.

There being no objection, the material and bill were ordered to be printed in the RECORD, as follows:

FEDERAL COMMUNICATIONS

COMMISSION,

Washington, D.C., March 9, 1973.

The VICE PRESIDENT,  
U.S. Senate,  
Washington, D.C.

DEAR MR. VICE PRESIDENT: The Commission has adopted as part of its Legislative Program for the 93rd Congress a proposal to amend section 4 of the Communications Act with respect to commissioners and Commission employees.

The bill essentially is designed to permit financial interests in mutual funds and companies who are subject to the licensing provisions of the Communications Act only because they make some incidental use of radio communications as an aid to their business operations. It would prohibit financial interests in broadcast stations, cable television systems, and communications common carriers or mutual funds whose in-

vestments are concentrated substantially in those areas.

The Commission's draft bill to accomplish the foregoing objective was submitted to the Office of Management and Budget for its consideration. We have now been advised by that Office that from the standpoint of the Administration's program there would be no objection to the presentation of the draft bill to the Congress for its consideration. Accordingly, there are enclosed six copies of our draft bill and explanatory statement on this subject.

The consideration by the Senate of the proposed amendment to the Communications Act of 1934 would be greatly appreciated. The Commission would be most happy to furnish any additional information that may be desired by the Senate or by the Committee to which this proposal is referred.

Sincerely,

DEAN BURCH,  
Chairman.

EXPLANATION OF BILL TO AMEND SECTION 4 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, WITH RESPECT TO COMMISSIONERS AND COMMISSION EMPLOYEES

This proposal would amend subsection 4(b) of the Communications Act of 1934, as amended, with respect to commissioners and Commission employees.

Subsection 4(b) of the Communications Act provides as follows:

"(b) Each member of the Commission shall be a citizen of the United States. No member of the Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio communication; in communication by wire or radio or in radio transmission of energy; in any company furnishing services or such apparatus to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used or communication by wire or radio; or in any company owning stocks, bonds, or other securities of any such company; nor be in the employ of or hold any official relation to any person subject to any of the provisions of this Act, nor own stocks, bonds, or other securities of any corporation subject to any of the provisions of this Act. Such commissioners shall not engage in any other business, vocation, profession, or employment. Any such commissioner serving as such after one year from the date of enactment of the Communications Act Amendments, 1952, shall not for a period of one year following the termination of his service as a commissioner represent any person before the Commission in a professional capacity, except that this restriction shall not apply to any commissioner who has served the full term for which he was appointed. Not more than four members of the Commission shall be members of the same political party."

Proposed paragraph (1) of subsection (b) includes, without substantive changes, all existing provisions of that subsection concerning commissioners except as to their financial interests. Proposed paragraphs (2) and (3) revise the provisions concerning the financial interests of commissioners and employees. Paragraph (4) explains that the Commission is not restricted by this Act from imposing restrictions in addition to those set forth in Public Law 87-849 and other laws or Executive Orders. Paragraph (5) affords the Commission the opportunity to waive certain provisions of subsection 4(b) to avoid hardships which could arise in exceptional circumstances.

Conflict of interest provisions in the law have the highly salutary purpose of ensuring that Government officials act in the public interest and maintain their affairs so that no actual or apparent personal financial mo-

tivations cloud their official decisions. We are in full accord with this objective.

However, subsection 4(b) of the Communications Act, adopted in 1934 under quite different circumstances than prevail today, is far more restrictive than recent Congressional and Administrative pronouncements and is substantially inconsistent with current national policy.

Congress in 1962 extensively revised chapter 11 of Title 18, U.S.C., dealing with bribery, graft, and conflicts of interest (Public Law 87-849, approved October 23, 1962). Section 208 of that revision requires non-participation by officers or employees in matters in which they have financial interests. It reads:

"(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

"Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

"(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services."

This statute of general applicability is not as restrictive as section 4(b) of the Federal Communications Act. We recognize, however, that in certain highly specialized fields, such as communications, some additional restrictions may be appropriate with respect to, for example, investments of commissioners and employees in companies regulated by the agency. In this respect, the Communications Act, proscribing certain activities and investments of commissioners and Commission employees, is much more restrictive than are the statutes of other regulatory agencies, which as a general rule apply only to commissioners.<sup>1</sup>

Past announcements of the executive branch and the Congress lend vital support to the view that conflict-of-interest provisions, while they must adequately protect the public interest, need not go beyond what is necessary to ensure that protection. Congress has also expressed its attitude with respect to this general problem in the legislative history of the 1962 amendments to the conflict-of-interest statutes. The House

Footnote <sup>1</sup> on next page.

Report (H. Rept. No. 748, 87th Cong., 1st Sess., p. 6) states:

"It is also fundamental to the effectiveness of democratic government, that, to the maximum extent possible, the most qualified individuals in the society serve its government. Accordingly, legal protections against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the Government of those men and women who are most qualified to serve it. An essential principle underlying the staffing of our governmental structure is that its employees should not be denied the opportunity available to all other citizens, to acquire and retain private economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public interest cannot be avoided."<sup>1</sup>

[footnote added]

Thus, the Commission is not seeking any special treatment in this area. We are endeavoring to have the antiquated provisions of this statute modified to reflect the present general law and to avoid obvious inequities which, through changed circumstances since its enactment, give the Communications Act potentially greater coverage than was either intended or envisioned.

There is no legislative history to explain the meaning Congress attached to section 4(b). Since its enactment, however, far-reaching changes have occurred in the communications art, and the Commission now has more than a million licensees. Thus, every executive's airplane equipped with radio communication must have a license from the FCC. States and municipalities are licensees of police and fire systems. In fact, practically every segment of the American economy (farming, mining, fishing, manufacturing, transportation, public utilities, etc.) uses radio communication as an aid to business operation, and is, therefore, subject to the licensing provisions of the Communications Act. The full import of this vast growth in licensing activity is in itself sufficient to cause a re-evaluation of the inequitable restrictions of section 4(b).

Another factor also tending to broaden the potential coverage of the section's existing language is the increased diversification of activity and financial interests of companies which has occurred in the three decades since this section's enactment. Thus, many companies, through a complex of corporate inter-relationships and business organizations, have remote interests in various licensees of the Commission. Although such an interest might not be readily apparent, stock ownership in these companies could conceivably be violative of section 4(b) of the Act.

The proposed amendment would therefore make clear that section 4(b) is not intended to cover the multitude of companies whose use of radio is incidental or whose relationship to companies subject to the Act is remote.

Even as to companies directly involved in broadcasting or communications common

<sup>1</sup>The more liberal provisions of the ICC Act (49 U.S.C. § 305) apply to members, examiners and members of a joint board; the CAB prohibition applies only to members of the Board (49 U.S.C. § 1321(b)); restrictions at FAA are on the Administrator and Deputy Administrator but not on employees of the agency (49 U.S.C. §§ 1341(b) and 1342(b)); restrictions against financial interests with respect to the Federal Power Commission apply only to commissioners (16 U.S.C. § 792).

<sup>2</sup>Senate Report No. 2213, 87th Cong., 2d Sess., notes as the "consensus" of views that some of the conflict-of-interest statutes create wholly unnecessary obstacles to recruiting qualified people for government service.

carriers, the effect of mutual fund development must be considered. Thus, almost any mutual fund would likely contain some shares in American Telephone and Telegraph Company, General Electric, Radio Corporation of America, or a similar company. Where the mutual funds' investments are not concentrated substantially in broadcasting companies, communications common carriers, or companies engaged in the manufacturing or sale of apparatus for wire or radio communication, the Communications Act should be clarified to permit commissioners and Commission employees to purchase shares of such mutual funds.

The effects of such wide disparity between the potential reach of section 5(b) of the Communications Act and existing national policy are difficult to evaluate. It is believed that its broad restrictions may tend to discourage some potential applications for employment with the Commission and to limit unfairly the investment opportunities available to Commission employees.<sup>3</sup>

The proposed amendment would continue to prohibit commissioners and Commission employees from having a direct financial interest in, employment by, or any official relation to (i) any person engaged in radio broadcasting; (ii) communications common carriers; (iii) persons a substantial part of whose activities consists of the manufacture or sale of apparatus for wire or radio communication; (iv) mutual funds, holding companies, or other investment companies whose investments are concentrated substantially in the entities included in paragraphs (i), (ii), and (iii). As an additional safeguard, the amendment also specifically states that nothing herein shall limit the authority of the Commission under Public Law 87-849 (87th Congress, approved October 23, 1962) or other law or Executive Order to restrict further the financial interests or official relations of its employees.

The proposal has a provision similar to the one in 18 U.S.C. § 208(b) which would permit the appointing authority to waive the prohibitions in certain cases. This provision would permit the avoidance of injustice or hardship which could arise in exceptional circumstances. For example, if a Commission employee were to be named beneficiary of a trust containing, among other things, a few shares of stock of an interstate communications common carrier, he could be in violation of the Act if he continued in the Commission's employ. Yet he might have no control over the trust and not be able to get the trustees to sell the prohibited shares. Other factual situations, each one unique, could arise and could be remedied under this waiver proviso.

Finally, the proposal would repeal as unnecessary the second sentence of subsection (j) of section 4, which appears redundant in the light of section 208 of Title 18,<sup>4</sup> to which the members and employees of the Commission would continue to be subject.

The Commission agrees that actual or apparent conflicts of interest should be avoided and prohibited. However, as shown, we believe the restrictions of section 4(b) potentially go far beyond what was ever envisioned

<sup>3</sup>Unlike the general conflict-of-interest statute (18 U.S.C. § 208), section 4(b) does not presently have a provision for waiver of insubstantial financial interest.

<sup>4</sup>That sentence provides: " \* \* \* No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest." It would seem that non-participation by a commissioner in any hearing or proceeding in which he has a pecuniary interest [section 4(j) of the Communications Act] is, if anything, not as broad as the non-participation in a wider variety of activities enumerated by 18 U.S.C. § 208 in which, to his knowledge, he, his spouse, minor child, etc., has a financial interest.

and the section's prohibitions are certainly more extensive than required in order to avoid actual conflicts of interest or even the "appearance of evil."

The general conflict-of-interest laws as revised in 1962, together with the additional restrictions contained in section 4(b) as proposed, will provide adequate statutory standards to protect the public interest and insure impartial and unbiased conduct.

Adopted: October 5, 1972

Commissioner Johnson not participating; Commissioner Reid absent.

S. 1478

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 4 of the Communications Act of 1934, as amended, is amended to read as follows:*

"(b) (1) Each member of the Commission shall be a citizen of the United States. A commissioner shall not engage in any other business, vocation, profession, or employment. He shall not, for a period of one year following the termination of his service as a commissioner, represent any person before the Commission in a professional capacity, except that this restriction shall not apply to any commissioner who has served the full term for which he was appointed. Not more than four members of the Commission shall be members of the same political party.

"(2) No member of the Commission or person in its employ shall be financially interested in, be employed by, or have any official relation to—

"(A) any person engaged in radio broadcasting, or the distribution of programs over wire;

"(B) any person engaged in communication by wire or radio as a common carrier;

"(C) any person a substantial part of whose activities consists of the manufacture or sale of apparatus for wire or radio communication.

"(3) Nothing herein shall preclude investment in mutual funds, holding companies, or other investment companies unless their investments are concentrated substantially in the areas covered by clauses (A) through (C) of paragraph (2).

"(4) Nothing herein shall be construed to limit any authority given to the Commission under Public Law 87-849 or other law or Executive Order to restrict further the financial interests or official relations of its employees.

"(5) Paragraph (2) of subsection (b) of this section shall not apply if the commissioner or employee advises the Government official responsible for appointment to his position of all pertinent circumstances and receives a written determination made by such official that the financial interest, employment, or official relation to a person described in paragraph (2) is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such commissioner or employee."

SEC. 2. The second sentence of subsection (j) of section 4 of the Communications Act of 1934, as amended, is hereby repealed.

By Mr. MAGNUSON (by request):  
S. 1479. A bill to amend subsection (b) of section 214 and subsection (c) (1) of section 222 of the Communications Act of 1934, as amended, in order to designate the Secretary of Defense (rather than the Secretaries of the Army and the Navy) as the person entitled to receive official notice of the filing of certain applications in the common carrier service and to provide notice to the Secretary of State where under section 214 applications involve service to foreign points. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, I introduce by request, for appropriate reference, a bill to amend subsection (b) of section 214 and subsection (c) (1) of section 222 of the Communications Act of 1934, as amended, in order to designate the Secretary of Defense (rather than the Secretaries of the Army and the Navy) as the person entitled to receive official notice of the filing of certain applications in the common carrier service and to provide notice to the Secretary of State where under section 214 applications involve service to foreign points, and ask unanimous consent that the letter of transmittal and statement of need be printed in the RECORD with the text of the bill.

There being no objection, the material and bill were ordered to be printed in the RECORD, as follows:

FEDERAL COMMUNICATIONS COMMISSION,  
Washington, D.C., March 7, 1973.

The VICE PRESIDENT,  
Senate,  
Washington, D.C.

DEAR MR. VICE PRESIDENT: The Commission has adopted as part of its legislative program for the 93d Congress a proposal to amend Sections 214(b) and 222(c) (1) of the Communications Act to substitute the Secretary of Defense (rather than the Secretaries of the Army and Navy) as persons of the Army and Navy) and add, in certain instances, the Secretary of State as persons entitled to receive official notice of the filing of certain applications.

Presently, when a common carrier wishes to extend its lines or to discontinue or curtail existing common carrier services, it must file an application for permission to do so. Section 214(b) of the Communications Act provides that among those entitled to receive official notice of the filing of such an application are the Secretaries of the Army and the Navy. A similar provision for official service is contained in section 222(c) (1), in the case of consolidations and mergers. The current version of these sections was enacted prior to the establishment of the Department of Defense. With a view to eliminating unnecessary paper work, the Commission proposes that sections 214(b) and 222(c) (1) be amended to provide for official notice to the Secretary of Defense. Experience has proved that while copies of applications have been sent to the Departments of the Army, Navy and Air Force, as well as the Secretary of Defense, the Department of Defense is the replying agency in the vast majority of cases. It is believed that limiting official notice to the Department of Defense should provide adequate notice to the military and, at the same time, eliminate unnecessary administrative work.

Further, the Department of State has indicated that foreign policy considerations may be involved in certain extensions or discontinuances of common carrier services. As a result, it is proposed that the Department of State be notified where authority is sought to provide service to a foreign point.

The Commission's draft bill to accomplish these revisions and the explanation of the draft bill have been submitted to the Office of Management and Budget for their consideration. We have now been advised that from the standpoint of the Administration's program, there is no objection to our submitting the draft bill to Congress for its consideration.

The Commission would appreciate consideration of the proposed amendments to the Communications Act of 1934 by the Senate. If the Senate or the Committee to which this bill may be referred would like any fur-

ther information on it, the Commission will be glad to provide it upon request.

Sincerely,

DEAN BURCH,  
Chairman.

STATEMENT

Explanation of the proposed amendment to section 214 and section 222 of the Communications Act of 1934, as amended, in order to designate the Secretary of Defense (rather than the Secretaries of the Army and Navy) as the person entitled to receive official notice of the filing of certain applications in the common carrier service and to provide notice to the Secretary of State where under section 214 applications involve service to foreign points

This legislative proposal would amend sections 214(b) and 222(c) (1) of the Communications Act of 1934, as amended, to designate the Secretary of Defense (rather than the Secretaries of the Army and Navy) as the person entitled to receive official notice of the filing of certain applications.

Presently, when a common carrier wishes to extend its lines or to discontinue or curtail existing common carrier services, it must file an application for permission to do so. Section 214(b) of the Communications Act provides that among those entitled to receive official notice of the filing of such an application are the Secretary of the Army and the Secretary of the Navy. A similar provision for official service is contained in section 222(c) (1), in cases of consolidations and mergers.

With a view to eliminating unnecessary paper work, the Commission proposes that sections 214(b) and 222(c) (1) of the Communications Act of 1934, as amended, be amended to provide for official notice to the Secretary of Defense and to delete "Secretary of the Army" and "Secretary of the Navy" where those titles appear in such sections. Experience has proved that while copies of applications have been sent to the Departments of the Army, Navy, and Air Force, as well as the Secretary of Defense, the Department of Defense is the agency that makes the required reply in the vast majority of cases.

Limiting official notice to the Department of Defense in such cases should provide adequate notice to the military and, at the same time, eliminate unnecessary administrative work.

The Department of State has indicated that foreign policy considerations may be involved in certain extensions or discontinuances of common carrier services. While the Commission has customarily provided notice to the Department of State of at least major matters in this area, the proposed amendment would require statutory notification to the Department of State where such applications for certificates involve service to foreign points.

Adopted: December 20, 1972.

Commissioner Reid concurring in the result.

S. 1479

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 214 of the Communications Act of 1934, as amended (47 U.S.C. 214 (b)), is amended by deleting from the first sentence thereof "the Secretary of the Army, the Secretary of the Navy," and inserting in lieu thereof "the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points)."

Sec. 2. That subsection (c) (1) of section 222 of the Communications Act of 1934, as amended, is amended by deleting from the first sentence thereof "the Secretary of the

Army," and "the Secretary of the Navy," and inserting in lieu thereof "the Secretary of Defense," immediately after "Secretary of State," in such sentence.

By Mr. MAGNUSON (by request):

S. 1480. A bill to amend the Communications Act of 1934, as amended, with respect to penalties and forfeitures. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, I introduce by request, for appropriate reference, a bill to amend the Communications Act of 1934, as amended, with respect to penalties and forfeitures, and ask unanimous consent that the letter of transmittal and statement of need be printed in the RECORD with the text of the bill.

There being no objection, the material and bill were ordered to be printed in the RECORD, as follows:

FEDERAL COMMUNICATIONS COMMISSION,  
Washington, D.C., March 7, 1973.

THE VICE PRESIDENT,  
U.S. Senate,  
Washington, D.C.

DEAR MR. VICE PRESIDENT: The Commission has adopted as part of its Legislative Program for the 93d Congress a proposal to amend the Communications Act of 1934, as amended, with respect to forfeitures.

The proposal would unify and simplify the forfeiture provisions as well as enlarge their scope to cover persons subject to the Act, but not subject to forfeitures, such as community antenna (CATV) systems.

The proposal would also provide for more effective enforcement of the forfeiture provisions. The limitation period for issuance of a notice of apparent liability would be extended from ninety days to three years for non-broadcast licensees and from one year for broadcast station licensees to one year or the remainder of the current license term, whichever is greater. All other persons would be subject to a three year statute of limitations. The maximum amount of forfeiture that could be imposed for a single offense would be \$2,000, and the maximum for multiple offenses would be \$20,000 for broadcast licensees, permittees and common carriers, and, CATV systems. The maximum forfeiture for all other persons would be \$5,000.

The Commission's draft bill to accomplish these revisions and the explanation of the draft bill have been submitted to the Office of Management and Budget for their consideration. We have now been advised that from the standpoint of the Administration's program, there is no objection to our submitting the draft bill to Congress for its consideration.

The Commission would appreciate consideration of the proposed amendments to the Communications Act of 1934 by the Senate. If the Senate or the Committee to which this bill may be referred would like any further information on it, the Commission will be glad to provide it upon request.

Sincerely,

DEAN BURCH,  
Chairman.

EXPLANATION OF PROPOSED AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934 TO UNIFY AND STRENGTHEN CERTAIN PROVISIONS FOR THE USE OF FORFEITURES AND PENALTIES

The Federal Communications Commission recommends the amendment of the Communications Act of 1934, as amended, to unify, simplify and make more effective the forfeiture provisions of sections 503(b) and 510. Section 503 provides for forfeitures where a broadcast licensee or permittee vio-

lates the terms of his license, the Communications Act, a Commission regulation, a cease and desist order issued by the Commission, or specified provisions of title 18 of the United States Code. Section 510 provides separately for forfeitures applicable to non-broadcast radio stations where any one of twelve specified offenses occurs. It also provides for the imposition of a forfeiture upon the operator of the station in particular cases. It is proposed to amend section 503(b) and repeal section 510 to place all of these classes of forfeiture under section 503(b), which would be expanded to apply to all persons (other than where ship or common carrier forfeitures are otherwise provided for) who violate the Communications Act, a Commission rule or order prescribed under the Communications Act or a treaty, the terms of a license permit, certificate, or other instrument of authorization, or the obscenity, lottery, or fraud provisions of title 18 of the United States Code.

The principal objective of the proposed legislation is to unify and simplify the forfeiture provisions; to enlarge their scope to cover persons subject to the Act but not now under the forfeiture provisions—such as cable systems (CATV), users of Part 15 or Part 18 devices, communications equipment manufacturers, and others also subject to Commission regulations who do not hold licenses issued by the Commission; and to provide for more effective enforcement.

Prior to 1960 the Commission was empowered to revoke station licenses or station construction permits and to issue cease and desist orders to any person violating the Communications Act or a Commission rule (see section 312 of the Act) and to suspend operator licenses (see section 303(m) of the Act). There was no provision for a penalty of lesser magnitude than revocation or denial of renewal of station licenses. Because a penalty affecting the license was not warranted for all violations, the Commission needed an alternative for dealing with those who should continue to hold licenses.

Therefore, in 1960 section 503(b), 74 Stat. 889, was enacted to give the Commission the enforcement alternative of imposing forfeitures in the case of broadcast licensees or permittees; and in 1962, section 510, 76 Stat. 68, was added to permit the Commission to impose forfeitures on non-broadcast radio licensees for twelve specific kinds of misconduct. These forfeitures have proved to be useful enforcement tools.

However, after nine years of experience and reevaluation under this enforcement scheme, the Commission has concluded that common procedures with uniform sanctions for common carriers, broadcast entities, and other electronic communications businesses subject to our jurisdiction are required to deal effectively with the many forms of misconduct that impede the policy and purposes of the Communications Act. Moreover, there is a need in addition to make forfeitures applicable to the many forms of non-broadcast radio licensee misconduct that are not now covered by the twelve categories in section 510. In light of these problems, the Commission recommends that non-broadcast radio licensees no longer be governed by section 510, which should be repealed, and that they be governed instead according to the provisions of section 503(b), which should be expanded. This comprehensive and uniform treatment would mean that the misconduct which is now subject to forfeiture under section 510 would become subject to forfeiture under the proposed section 503(b).

The proposed amendments would make three additional material alterations in the Communications Act's existing forfeiture provisions. First, the forfeiture sanctions would be made available against all persons who have engaged in proscribed conduct.

Therefore, the amended section 503(b) would reach not only the broadcast station licensees and permittees now covered by section 503(b) and the other station licensees and operators now covered by section 510, but also any person subject to any provisions of the Communications Act<sup>1</sup> or the Commission's rules as well as those persons operating without a valid station or operator's license, those operators not required to have a license, and those licensed radio operators who are now subject only to suspension under section 303(m).

Second, the limitations period for the issuance of notices of apparent liability would be extended for broadcast station licensees from the present one year to one year or the current license term, whichever is greater, and for non-broadcast radio station licensees from the present ninety days to three years. For all other persons subject to forfeiture under the proposal, the limitations period would be three years.

Third, the maximum amount of forfeiture that could be imposed for the acts or omissions set forth in any single notice of apparent liability would be modified as follows: (1) the maximum forfeiture that could be imposed for a single offense would be \$2,000; and (2) the maximum forfeiture that could be imposed for multiple offenses would be (a) \$20,000 in the case of a common carrier, a broadcast station licensee or permittee, or a person engaged in distributing to the public broadcast signals by wire or engaged in distributing to the public other program services by wire if such activity is the subject of Commission regulation, and (b) \$5,000 in the case of all other persons. Existing section 503(b) provides for a maximum of only \$1,000 for single offenses by a broadcast station and \$10,000 for multiple offenses. Those persons subject to existing section 510(a) are liable only for \$100 for single offenses and a maximum of \$500 for multiple offenses.

The proposed amendments to broaden the Commission's forfeiture authority would alleviate the difficulties caused by the lack of forfeiture authority against CATV systems (or other communications businesses that may become subject to our jurisdiction), users of incidental and restricted radiation devices, users of devices which contain radio frequency oscillators<sup>2</sup>, communications equipment manufacturers, persons operating without holding a required license, and others subject to Commission regulations. Except for the Commission's cease and desist authority, which is not an effective deterrent to misconduct, enforcement of the Act or Commission rules or orders against such persons now must be by judicial action under section 401 or criminal prosecution under sections 501 and 502.

In extending the forfeiture procedures to licensed operators, the proposed amendment would provide an administrative alternative to the sometimes unduly harsh penalty of

<sup>1</sup>A person subject to a forfeiture under title II or parts II or III of title III or section 507 of the Act would not, however, be subject to a forfeiture under the proposed section 503(b) for the same violation. This provision in the proposal is similar to a provision now in section 510.

<sup>2</sup>Part 15 of the Commission's rules governs the use of devices which only incidentally emit radio frequency energy and restricted radio devices such as radio receivers. Part 18 of the Commission's rules governs the use of industrial, scientific and medical equipment, such as industrial heating equipment, all of which incorporate radio frequency oscillators. Such devices are permitted to operate without issuance of an individual license provided that they are operated in accordance with the provisions in the rules designed to minimize interference to regular radio communications services.

license suspension now authorized in section 303(m). License suspension may be unduly harsh if it denies the offender his customary means of livelihood for the suspension period. License suspension may also cost the offender permanent loss of his job, or of his customers if he operates a mobile radio service maintenance business. The proposed extension of the section 503(b) forfeiture provisions to licensed operators would afford the Commission an effective medium for obtaining compliance by operators, but would not cause the secondary detriments which often stem from license suspension. The administrative penalty of forfeiture would also provide a more feasible alternative to cease and desist orders or judicial enforcement under sections 401, 501 or 502, against operators who are not required to hold a license and against whom, therefore, a license suspension is not an available penalty.

Under the proposal, forfeiture liability would arise only after (1) a person has been served personally with or been sent by certified or registered mail to his last known address a notice of apparent liability; (2) he has been given an opportunity to show in writing why he should not be held liable; and (3) if he has submitted a written response, the Commission has considered the response and issued an order of forfeiture liability.

In addition to these procedural protections applicable to all persons subject to our jurisdiction, we have provided special procedural protection for a limited group of individual members of the public at large who may be presumed to be unaware of the Commission's regulation of equipment they may be operating. For example, there may be concern that an individual would be subject to forfeiture for willful maloperation of an electronic device such as a garage door opener, an electronic water heater, or electronic oven, when he may be unaware of the applicability of the Communications Act or the Commission's rules and regulations.<sup>3</sup>

For this limited group, no forfeiture could attach unless prior to the notice of apparent liability the Commission has sent him a notice of the violation and has provided him an opportunity for a personal interview and the individual has thereafter engaged in the conduct for which notice of the violation was sent. The Commission's obligation would be limited first of all to a sole natural person that is an "individual" as distinct from the more general term "person" as used in section 3(i) of the Communications Act. Moreover, that individual would not be within the special protection provisions if he was engaged in an activity that required the holding of a license, permit, certificate, or other authorization from the Commission or was providing any service by wire subject to the Commission's jurisdiction.

It should be noted that this special procedure would not have to be accorded a second time to an individual who subsequently engaged in the same conduct; and the individual may be liable to a forfeiture not only for the conduct occurring subsequently but also for the conduct for which notice of a violation was sent and opportunity for a personal interview given.

Under existing provisions of the statute, which would not be changed, any person against whom a forfeiture order runs may challenge the order by refusing to pay. If the United States institutes a collection action, the issue of forfeiture liability would be reheard in a trial *de novo* in a U.S. District Court.

The second major modification in the Commission's proposal, the extension of the pres-

<sup>3</sup>Should the maloperation of any such device create hazards to life or property, the Commission would still have authority under section 312 to issue a cease and desist order.