

COMMUNICATIONS ACT AMENDMENT—  
PENALTIES AND FORFEITURES  
AUTHORITY OF THE FEDERAL  
COMMUNICATIONS COMMISSION

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R E P O R T

OF THE

SENATE COMMITTEE ON COMMERCE

ON

S. 2343

TO AMEND THE COMMUNICATIONS ACT OF 1934, AS AMENDED,  
WITH RESPECT TO PENALTIES AND FORFEITURES



MAY 25, 1976.—Ordered to be printed

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REPORT  
No. 94-920

## COMMUNICATIONS ACT AMENDMENT—PENALTIES AND FORFEITURES AUTHORITY OF THE FEDERAL COM- MUNICATIONS COMMISSION

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Mr. MAGNUSON (for Mr. PASTORE), from the Committee on Commerce,  
submitted the following

### REPORT

[To accompany S. 2343]

The Committee on Commerce, to which was referred the bill (S. 2343) to amend the Communications Act of 1934, as amended, with respect to penalties and forfeitures, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

#### SUMMARY AND PURPOSE

The purpose of S. 2343 is to unify and simplify the forfeiture provisions in the Communications Act of 1934, to enlarge their scope to cover all persons subject to the act, to provide more realistic limitations periods, to provide effective deterrent levels of forfeiture authority, and to provide the Federal Communications Commission (FCC) with the discretion to marshal effectively its assets in the enforcement of the Communications Act and rules and regulations promulgated thereunder.

The Communications Act of 1934 now imposes monetary civil penalties on certain individuals who fail to comply with the Communications Act, FCC regulations, or related matters. These civil liabil-

ities include the forfeiture provisions in section 503(b) and section 510 which are limited to broadcast and nonbroadcast radio stations. S. 2343 would enlarge the scope of forfeiture liability under these sections to cover other persons subject to the Communications Act—such as cable television systems, users of experimental or medical equipment emitting electromagnetic radiation, persons operating without a valid radio station or operator's license, and some communications equipment manufacturers.

S. 2343 would make additional changes in the existing forfeiture provisions. It would extend the limitations period within which notices of liability must be issued: for persons not previously subject to forfeiture liability, 1 year; for nonbroadcast licensees, from the present 90 days to 1 year; and for broadcast licensees, from the present 1 year to 1 year or the current license term, whichever is longer, not to exceed 3 years. The maximum forfeiture that could be imposed for a single violation would be raised to \$2,000, for multiple violations, within any single notice of liability, \$20,000 for a common carrier, broadcast licensee, or cable system operator, and \$5,000 in the case of all other persons. The bill would authorize the Commission to mitigate or remit common carrier forfeitures in the same way as it now can for other persons. And the Commission would be given its choice of using the traditional procedure for imposing a forfeiture or alternatively holding an adjudicatory hearing under section 554 of the Administrative Procedure Act.

#### BACKGROUND AND NEED

S. 2343 was introduced by Senators Magnuson and Pearson at the request of the Federal Communications Commission. The Committee held a hearing on the bill on January 21, 1976.

The Federal Communications Commission has testified to the committee that its existing forfeiture authority is inadequate to enforce effectively the Communications Act of 1934. The Commission points out that not everyone now subject to the act is subject to forfeiture authority. The limitations period within which a notice of liability must be issued is unrealistic in light of the necessary preliminary field investigations required. The maximum amount of forfeitures permitted for single and multiple violations are unrealistically low to be an effective deterrent for highly profitable communications entities or to provide sufficient penalty to warrant the Attorney General's or the various U.S. District Attorneys' attention for prosecuting forfeitures within the Federal district courts. The Commission argues that certain procedural requirements contained in existing forfeiture provisions compel misallocation of Commission assets and prevent the FCC from getting full benefit of extremely limited FCC field resources in the Commission's effort to encourage individuals to comply fully with the Communications Act of 1934.

#### *Forfeiture procedures*

A forfeiture is a civil penalty authorized under the Communications Act for certain violations of that act or related communications statutes, treaties, rules, or regulations. Whenever the Federal Communications Commission finds that grounds exist to support a suit for collection of forfeiture authorized under the Communications Act of 1934,

a written notice of apparent liability is issued by the Commission to the violator. That notification specifies the violation and the amount of the forfeiture. The offender has several alternatives, including immediate payment of the amount specified, a right to show cause in writing why he should not be held liable, or admission of liability with the right to argue that the amount of the forfeiture is excessive. If the person who receives the notice of apparent liability submits a statement in writing showing why he should not be held liable, the FCC then must proceed to an order declaring nonliability or establishing the amount of the forfeiture. If the person subject to the forfeiture then fails to pay the forfeiture to the Treasury, the case may be referred by the Federal Communications Commission to the Attorney General for appropriate civil action to recover the forfeiture in accordance with section 504(a) of the Communications Act. Section 504(a) authorizes the Attorney General to proceed in the Federal district court in a trial de novo and to seek judgment for the amount of forfeiture.

S. 2343 amends this historic forfeiture procedure by giving the FCC its choice in any civil penalty case to use either a full adjudicatory hearing before the FCC or the less formal written "show cause" proceeding described above to determine a forfeiture liability. Under S. 2343, the Commission has full discretion to choose the appropriate proceeding. The Commission may issue either a notice with an opportunity for hearing under section 503(b)(3)(A) or a notice of apparent liability with an opportunity to show in writing why the suspected violator should not be held liable under section 503(b)(4). The choice of the type of proceeding is exclusively the Commission's and it is determined by the character of the notice the FCC chooses to issue a suspected violator.

The Committee believes the FCC needs the alternative of an adjudicatory hearing for the exceptional forfeiture case where urgency, precedent value, or convenience of the Commission warrants a proceeding exclusively under the Commission's control until a final judgment on appeal is obtained. The Justice Department's only involvement in an adjudicatory hearing before the Commission under new section 503(b)(3) would be to pursue a collection action after final judgment if the violator failed to pay the fine.

#### *Other FCC enforcement mechanisms*

Forfeiture is one of several law enforcement mechanisms available to the FCC to enforce its rules and regulations. However, other enforcement alternatives are cumbersome and time-consuming procedures which are inappropriate for relatively minor violations. The Commission may enter a cease and desist order followed by civil contempt proceedings which the Department of Justice must agree to prosecute (*e.g.*, section 312(b)). The cease and desist order is particularly cumbersome because the violator is entitled to an FCC order to show cause why a cease and desist order should not be issued. There is then a reply period of 30 days with the opportunity for a full evidentiary hearing. Only then can the FCC issue a cease and desist order which must specify findings, grounds and reasons, and the effective date. Failure to obey that order then becomes subject to civil contempt proceedings by the Department of Justice in U.S. district court.

Another enforcement alternative is criminal prosecution. Title 18 of the United States Code and the Communications Act of 1934 impose criminal liability for certain specified acts. However, criminal enforcement is exclusively in the hands of the Department of Justice.

Another enforcement mechanism available to the FCC in certain instances is the authority to suspend or revoke broadcast and non-broadcast radio station licenses (*e.g.*, section 303(m), section 312(a)). This suspension and revocation authority has the obvious limitation of not reaching unlicensed operators or persons who are not required to be licensed by the FCC. Also, license revocation constitutes a death sentence for any commercial entity dependent upon its radio license. Therefore, the FCC is naturally reluctant to use this extreme remedy for behavior which merits reprimand or small penalty but does not merit shutdown of the entire radio operation.

Another enforcement alternative is a "writ of mandamus" issued by a U.S. district court, "commanding such person to comply with the provisions of" the Communications Act of 1934 (*e.g.*, section 401 (a)). It can only be issued by a district court upon application by the Department of Justice at the request of the Federal Communications Commission.

The final enforcement alternative available to the FCC is an accounting order imposed against a common carrier (*e.g.*, section 407). This mechanism is available to the Commission in the case of a common carrier tariff increase. The Commission can permit a tariff increase to go into effect subject to an accounting order, pending final Commission resolution of the lawfulness of the tariff increase. If the tariff is eventually found to be unlawful, the Commission can order the amount subject to the accounting order to be returned to the persons for whose benefit the order was imposed by the FCC. Those individuals must enforce their rights under an accounting order—by suing in the district court or State court with jurisdiction.

Each of these enforcement authorities has severe limitations. Few are applicable to all persons subject to the Communications Act. All are extremely prolonged and expensive procedures, both for the persons charged with the violations and for the Government. Many have limited applicability to certain specific kinds of offenses in the Communications Act. All are relatively low priority matters to the Department of Justice.

#### *Prior history of FCC forfeiture authority*

The FCC has long had forfeiture authority over common carriers and maritime radio stations. The FCC was first given forfeiture authority over broadcasters in 1960. Section 503(b) of the Communications Act of 1934 was added to make broadcast licensees subject to some "middle ground" remedy other than license revocation (74 Stat. 889—Public Law 96-752, Sept. 13, 1960). In 1962, section 510 (76 Stat. 68—Public Law 87-448, May 11, 1962) was added to permit the Commission to impose forfeitures on nonbroadcast radio licensees for certain specific kinds of misconduct.

The Committee believes that 13 years of experience under these limited forfeiture provisions indicate that common procedures with uniform sanctions for persons subject to the FCC's jurisdiction are

needed. Recent years have witnessed many forms of misconduct that impede the policy and purposes of the Communications Act. A more comprehensive and uniform treatment, as proposed in the Committee's bill, will eliminate many inequities in the present forfeiture provisions and bring the Commission's forfeiture powers more in line with the demands of the present national needs in telecommunications.

*Extension of forfeiture sanctions to all persons subject to the Communications Act*

S. 2343 extends the forfeiture sanction to all persons who engage in FCC proscribed conduct. New section 503(b) reaches not only the broadcast station licensees covered by present section 503(b) and other nonbroadcast radio station licensees and operators covered by present section 510, but extends forfeitures to any person subject to any provisions of the Communications Act or the Commission's rules, including those persons operating without a valid radio station license or operator's license, those persons not required to have licenses, and persons such as cable television operators, users of medical and experimental radio equipment not required to be licensed but subject to FCC regulation under part 15 or part 18 of FCC rules and regulations, and some communications equipment manufacturers.

In testimony before the committee, the FCC pointed to a number of situations which typically involve the violation of FCC rules for which speedy remedy is not now available to the Commission:

(a) Failure to conduct annual performance tests required by FCC rules;

(b) Failure to file financial and ownership reports and forms required by FCC rules;

(c) Unlicensed operations in the increasingly popular citizens band radio service;

(d) Interference, obscenity, or other improper conduct by a nonbroadcast radio station which may not fall within one of the 12 prohibitions enumerated in present section 510;

(e) Violation of network nonduplication rules by cable television systems failing to protect a local television station's network programming;

(f) Commencement of cable television operations without first obtaining the required certificate of compliance; and

(g) Carriage of television signals illegally by a cable television system.

The Committee believes that forfeiture authority is a much more effective sanction than cease and desist orders, or criminal prosecution for reaching the small number of persons who fail to abide by FCC rules and engage in these types of activities.

S. 2343 also brings under the Commission's forfeiture authority users of incidental and restricted radiation devices such as radio receivers and users of industrial, scientific and medical equipment, such as industrial heating equipment, which incorporate radio frequency oscillators. These devices are not subject to FCC licensing provisions but must be operated in accordance with FCC rules designed to minimize interference with regular radio communication services. The only effective remedy the Commission currently has

against such users in cease and desist authority which, in the Committee's view, is not an effective deterrent to misconduct.

*Expanded authority for imposing forfeitures*

S. 2343 would expand the grounds for forfeiture against nonbroadcast licensees and all other persons subject to FCC regulation to parallel the conduct presently proscribed in section 503(b)(1) for broadcast licensees.

The standard for liability for violations of FCC authorizations and licenses is a substantiality standard. A licensee or cable operator must willfully or repeatedly fail to substantially comply with the license or authorization. The standard for liability for violations of specific FCC rules is not a substantiality test but a test of willful or repeated behavior. The Committee has amended S. 2343 to make clear that cable television operators are subject to liability under the same standards as broadcasters.

New subparagraphs (A) and (B) of section 503(b)(1) retain the existing standards of law with respect to the burdens of proof necessary to impose a forfeiture by requiring a finding of willful or repeated behavior. Arguments were made before the Committee that this should be changed to a willful and repeated, or alternatively, a willful or negligent standard. The Committee believes no change is warranted in the "willfully or repeatedly" standard of the existing standard 503(b). A "willfully and repeatedly" standard would substantially reduce the FCC's forfeiture authority by imposing a test of willfulness in every case of forfeiture. Substituting a negligent standard for the repeatedly standard would frustrate the purpose of the forfeiture mechanism which offers a quick, fair proceeding with maximum deterrent effect and minimum cost to the person served with the notice of liability. The current law makes it clear that the burden is on the licensees to exercise every possible diligence to comply with the FCC rules. Protection of the Nation's scarce electromagnetic energy spectrum is an important national policy. Persons wishing to use that spectrum for their own commercial or personal benefit must be willing to accept the responsibilities commensurate with the privilege. As the Commission stated in one of its earliest forfeiture proceedings:

Forfeitures were authorized to obtain greater compliance by licensees with the terms of their licenses and the Commission's rules, and to deter noncompliance. If serious, repeated violations are excused without sanction, the sanction of forfeiture will not be the effective tool it was intended to be. Rather than being deterred, licensees would be encouraged to continue violating the rules and to depend upon excuses and promises to avoid liability. We intend to use the forfeiture proceeding, as we believe it was intended to be used, to impel broadcast licensees to become familiar with the terms of their licenses and the applicable rules, and to adopt procedures, including periodic review of operations, which will insure that stations will be operated in substantial compliance with their licenses and the Commission's rules. *Crowell-Collier Broadcasting Corp.*, 44 FCC 2444, 2449-50 (1961).

In summary, the Committee does not believe that it is appropriate to change existing law as it applies to broadcast licensees with respect to the general standard of conduct subject to forfeiture liability. Therefore, S. 2343 retains the test of "willfully or repeatedly" behavior as subject to forfeiture liability. This permits forfeiture for a single, willful act, or for inadvertent violations which are repeated. It carries out the underlying philosophy of S. 2343 to treat all persons subject to the Communications Act the same.

*Limitations period for the issuance of notices of apparent liability*

S. 2343 makes the limitations period within which the FCC must issue a notice of forfeiture liability 1 year or the beginning of the license term for a broadcast licensee, not to exceed 3 years. In the case of any other person, the limitation period is 1 year from the date on which the violation occurred. After that period, the Commission could not begin a forfeiture proceeding. The Committee amendment at section 503(b)(6)(A) clarifies the Committee's intent that no broadcast station licensee can be subject to forfeiture for a violation which occurred more than 3 years prior to the issuance of the notice, even if the broadcast licensee term began more than 3 years before the date of the notice.

The Committee believes that an extension of the time limitation for beginning a forfeiture action is necessary. Usually, violations of the Commission's rules in the nonbroadcast services are detected through field office monitoring. When an apparent violation is found, the field office, as a matter of practice, issues a citation and offers an opportunity to comment on the alleged misconduct. These notices are routinely sent to Washington where they are checked against the licensee's records. In those cases where there is a history of repeated misconduct, or where the misconduct appears to be willful or sufficiently serious, the notice of forfeiture liability is issued. The increasing workloads in the nonbroadcast services (over 2 million authorizations are outstanding in the safety and special radio services alone) and the limited number of staff personnel to review possible violations have made it impossible to issue notices within the 90-day period of present law for nonbroadcast radio licensees.

A longer limitation period is also necessary in the broadcast area. While some violations may be found during regular station inspections by FCC field personnel, the majority of violations of FCC rules are discovered at the time of broadcast license renewal. In most instances, a 1-year period for imposing a forfeiture will have lapsed by the time a station's broadcast license comes up for renewal. Under present law the Commission is left with the sole alternative of revoking a license when a forfeiture would be a much more appropriate treatment of the violation.

*Increases in the amount of forfeiture which can be imposed*

S. 2343 increases the maximum amount of forfeiture which can be imposed for violations: (1) The maximum forfeiture that could be imposed for a single violation would be \$2,000; and (2) the maximum forfeiture that could be imposed for multiple violations in any single notice would be \$20,000 in the case of a broadcast licensee, broadcast permittee, common carrier, or community antenna television system,

and \$5,000 in the case of any other person. Currently, broadcast stations are liable only for \$1,000 for a single violation and \$10,000 for multiple violations in any single notice. Those persons subject to forfeiture in existing section 510(a) are liable only for \$100 for any single type of violation and a maximum of \$500 for multiple violations.

The Committee received testimony opposing the large increase in the amount of forfeitures which nonbroadcast licensees will be subject to under S. 2343. The Committee believes that the increases are appropriate for the needs of the Nation to protect the electromagnetic spectrum and its use. The current forfeiture limits are unrealistic and totally inadequate to deter large communications businesses. The same is equally true in the case of individuals. The Committee's substitute amendment makes clear the new forfeiture limits are maximum amounts. The Committee does not believe that these maximum penalties are appropriate for every case. The Commission must take into account, under the terms of the Committee's amendment, the facts and culpability of the violator in each case before setting the amount of the forfeiture. The Commission would still retain the discretion to impose small forfeitures for offenses of lesser gravity. The Committee notes that the FCC itself has stated that it is not FCC policy to fix the amount of forfeitures at the maximum of the statutory limit, but to consider several factors including seriousness of the violation, circumstances, duration, and financial condition of the licensee (*See, for example, Williams County Broadcasting Station, Inc.*, 34 RR 2d 107 (1975); *Radio Beaumont, Inc.*, 13 FCC 2d 965, 968 (1968)). In its letter of transmittal of the requested legislation to the Congress, the Commission stated:

The Commission fully recognizes the necessity of tailoring forfeitures to the nature of the offense and the offender and has done so within the present statutory authority. Furthermore, the Commission would still have the authority to mitigate or remit forfeitures after considering a request for such relief.

#### *Notice requirements*

S. 2343 requires that forfeiture liability could arise only after a person has been served personally or by certified or registered mail with a notice. In addition, it contains a special procedural protection comparable to existing law for those persons who will be made subject to forfeiture liability for the first time and who are presumed to be unaware of Commission regulations. For persons who are not required to hold a license, permit, certificate, or other authorization issued by the Commission, no forfeiture may attach unless prior to the issuance of any notice the Commission has sent a citation for the violation and has provided an opportunity for a personal interview and the person has thereafter engaged in the prohibited conduct. This special citation procedure and interview requirement protects persons who would otherwise be subject to forfeiture for willful violations such as altering electronic devices which emit electromagnetic radiation such as garage door openers or electronic water heaters or electronic ovens in violation of FCC rules. Such a person could not be subject to forfeiture until there was clear evidence through the issu-

ance of a citation of violation and interview opportunity that he was aware of the applicability of the Commission's rules and regulations governing the proscribed behavior. Only if he thereafter engaged in the conduct for which the citation of violation was sent could a notice of liability be issued. In such an event, he would then be subject to forfeiture liability not only for the conduct occurring subsequently but also for the conduct for which the citation of violation was originally sent. The Committee has amended S. 2343 to make it clear that cable channel lessees, community access cable channel users, and others who are not cable system operators, but who use wire distribution information services, should have the benefit of the personal interview requirement.

Under existing law, the Commission is obligated to provide a personal interview to any nonbroadcast station licensee or operator who requests an interview after he receives a notice of apparent liability. S. 2343 alters this interview requirement by relieving the Commission of the unnecessary burden of conducting interviews with persons who are licensed or required to hold licenses or other authorizations from the Commission. In the past, only 10 to 15 percent of the persons to whom a notice of apparent liability has been issued have availed themselves of the interview opportunity under section 510. Seldom has such an interview elicited any data which the licensee has not already furnished the Commission. On the other hand, the interviews pose a substantial burden on the assets of the FCC field offices. Critical engineering personnel are diverted from regular duties to interview the suspected violator and then to draft and submit detailed reports to Washington, D.C.

The Committee has amended the proposed language in new section 503(b)(3) to make it clear that once a citation of violation has been issued and a personal interview has been conducted, a further citation of violation is not required for the Commission to issue a notice and begin forfeiture proceedings.

*Increased authority in the FCC to mitigate or remit forfeitures*

The FCC currently has express authority to mitigate or remit forfeitures under parts II and III of title III, and sections 503(b), 507, and 510 of the Communications Act. S. 2343 would amend this provision to eliminate the requirement that the person subject to the forfeiture seek the remission or mitigation of the forfeiture.

S. 2343 would also extend the authority of the FCC to allow remission or mitigation of title II (Common Carrier) forfeitures. Current law provides the FCC with no express authority to remit, mitigate, or otherwise redo a forfeiture imposed under the common carrier forfeiture provision of the Communications Act. The Commission does have such express authority with respect to all other general forfeiture provisions in the Communications Act. The Committee believes this discretion should extend to common carrier forfeitures.

CATV ISSUES

The Committee received testimony from cable television interests objecting to any extension of the civil penalty forfeitures authority of the Federal Communications Act as it applied to cable television

operators. The Committee concurs with the recommendations of the FCC that appropriate forfeiture authority over cable television operators is necessary. The U.S. Supreme Court has affirmed FCC jurisdiction over cable television to the extent that such authority is reasonably ancillary to the Commission's responsibilities for broadcast regulation (*United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968); *United States v. Midwest Video Corporation*, 406 U.S. 649 (1972)). The full extent of the FCC's ancillary jurisdiction has not been specifically defined either by statute or judicial decision but the Committee believes that is not a valid reason to deny the agency the necessary enforcement authority to insure compliance with its proper regulations. If any particular aspect of FCC regulation exceeds the agency's authority, the remedy is judicial appeal, not across-the-board denial of adequate enforcement powers. The FCC's present enforcement tools of cease and desist and revocation of certificates of compliance are totally inadequate in the cable television area. The forfeiture alternative is essential. The purpose of S. 2343 is to treat all parties subject to the Communications Act equitably and fairly and is not exclusively aimed at CATV. Any exception for CATV would work great unfairness on other industries who are less likely than cable operators to be familiar with FCC rules and regulations but are nevertheless subject to forfeiture authority.

The Committee notes that S. 2343 is prospective in its effect for cable operators. Section 5 of S. 2343, as amended by the Committee, specifically provides that "any act or omission which occurs prior to the effective date of this act shall incur liability under the provisions" of existing forfeiture authority as then in effect. Therefore, cable operators will not be subject retroactively to increased forfeitures for violations which occurred prior to the effective date of S. 2343.

#### CONCLUSION

This legislation is vitally important to the FCC's regulatory efforts. The Committee believes that more uniform, comprehensive, and fair forfeiture provisions accompanied by appropriate discretion in the FCC to mitigate or remit in meritorious cases will contribute substantially to greater compliance with the Communications Act. The entire Nation will benefit from better compliance with the Federal rules and regulations which protect the important national resource of the electromagnetic spectrum.

#### HEARINGS

The Committee conducted hearings on S. 2343, a bill to amend the Communications Act of 1934, as amended, with respect to penalties and forfeitures on January 21, 1976. Witnesses were heard and statements for the record were received from the Federal Communications Commission, cable television interests, citizens groups, common carriers, communications equipment manufacturers, and industries which use land mobile radio communications as part of their business operations.

## SECTION-BY-SECTION ANALYSIS

*Section 1.*

This section sets forth the short title of the bill—the “Communications Act Amendments of 1976”.

*Section 2.*

This section amends subsection (b) of section 503 of the Communications Act of 1934 (47 U.S.C. 503(b)), to provide as follows:

Paragraph (1) simplifies and unifies the provisions of the Communications Act which invoke civil penalty (forfeiture) liability. It enlarges the category of those subject to forfeiture liability for violations of the Communications Act, the criminal code as it relates to communication by wire or radio, or the rules and regulations of the Federal Communications Commission. The paragraph provides that any person subject to FCC regulation is subject to forfeiture liability. It thus extends forfeiture liability under the Communications Act to many persons not currently subject to any type of forfeiture liability, such as cable systems, users of part 15 or part 18 devices (radio frequency or industrial, scientific, and medical equipment subject to FCC regulation), persons operating without a valid FCC license, and some communications equipment manufacturers. Any person is liable for forfeiture who (1) willfully or repeatedly fails to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Federal Communications Commission; or (2) willfully or repeatedly fails to comply with any of the provisions of the Communications Act, of any rule, regulation, or order of the Federal Communications Commission if such FCC rule, regulation, or order was lawful under either the authority of the Communications Act or the authority of any international treaty, agreement or convention binding on the United States.

The actions by broadcasters which are subject to forfeiture liability are unchanged. However, people associated with broadcast activities are now subject to forfeiture liability for violations which were formerly enforceable only against the broadcast station licensee, including:

(1) Section 509(a)(4) of the Communications Act which makes it unlawful for any person to participate in any way in a rigged contest program;

(2) Section 1304 of the Criminal Code (18 U.S.C.) which makes it a crime for anyone to broadcast or permit the broadcast of lottery information;

(3) Section 1343 of the Criminal Code (18 U.S.C.) which makes it a crime for anyone to commit fraud by means of wire, radio, or television communications; or

(4) Section 1464 of the Criminal Code (18 U.S.C.) which makes it a crime for anyone to use obscene language on any type of radio.

The amended subsection continues present law by stating that forfeiture under this section shall be in addition to other penalties provided by the Communications Act, and by exempting from the general forfeitures in section 503(b) conduct subject to other forfeiture

provisions in title II (Common Carriers) or parts II (Radio Equipment and Radio Operations on Board Ship) and III (Radio Installations on Vessels Carrying Passengers for Hire) of title III or section 507 (Violation of the Great Lakes Agreement) of the Communications Act.

Paragraph (2) increases the maximum forfeiture liability under section 503 (b) from \$1,000 to \$2,000 for broadcast licensees, from \$100 to \$2,000 for persons operating nonbroadcast radio stations and to \$2,000 for persons not previously covered by the forfeiture provisions. The language concerning multiple violations is clarified. A continuous violation is made a separate offense each day it occurs and so becomes "repeated" on the second day of the violation. A repeated forfeiture can then be imposed on the second day of a continuing violation and multiple forfeitures can be imposed beginning on the third day of the continuing violation. For nonbroadcast licensees, this represents a significant change in existing law which specifies that multiple liabilities cannot be imposed for any one type of violation irrespective of the number of violations thereof.

Paragraph (2) also sets a maximum on the total forfeiture penalty that can be imposed for multiple liabilities set forth in any single notice, as follows: (1) \$20,000 in the case of a broadcast licensee or permittee, common carrier subject to the Communications Act, or community antenna television operator (CATV), and (2) \$5,000 in the case of all other persons. The Commission is directed to take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and the violator's culpability, prior offenses, ability to pay and other matters as justice may require when it sets the amount of the forfeiture.

Paragraph (3) gives the FCC the discretion to use a new procedure to enforce forfeiture penalties. The FCC is given its choice of using a full adjudicatory hearing under section 554 of the Administrative Procedure Act or the traditional written "show cause" proceeding, under new paragraph (4). Under this new procedural alternative, the FCC must issue a notice and grant an opportunity for a hearing before the Commission or an administrative law judge. Once the Commission has reached a final judgment on a forfeiture penalty, the violator has a right to seek judicial review of that penalty pursuant to section 402 (a) of the Communications Act, which is the standard appellate procedure applicable to any final FCC order. Any person who fails to pay the forfeiture penalty after it has become final and unappealable is subject to a collection action in the appropriate district court of the United States brought by the Attorney General. The validity and appropriateness of the final order of a forfeiture penalty are not subject to judicial review in such an action.

Paragraph (4) describes the alternate forfeiture procedure available to the FCC. If the FCC chooses to invoke this procedure, no forfeiture liability shall attach unless a written notice of apparent liability was issued by the Federal Communications Commission and either was actually received or was sent by registered or certified mail to the person's last known address. The notice must specifically identify the particular provision of law, rule, regulation, agreement, treaty,

convention, licensee, permit, certificate, or other authorization or order involved. Additionally, the paragraph retains the current requirement that any person notified be granted an opportunity to show in writing within a reasonable period as set by FCC rule why he should not be held liable.

Paragraph (5) is new. It provides a special procedural protection in addition to the provisions of paragraphs (3) and (4). It applies to everyone except those persons who hold or are engaged in activities which require an FCC license, permit, certificate, or other authorization from the Federal Communications Commission or any person who is providing any service by wire subject to the Commission's jurisdiction. Under this additional procedure, the Commission must first send the person a citation of the violation and provide a reasonable opportunity for personal interview with an FCC official at an FCC field office nearest the person's residence. No forfeiture liability under the amended subsection will attach unless the person has thereafter engaged in the conduct for which the citation of violation was sent. When a person subsequently engages in the same conduct for which he has already been sent a citation and given an opportunity for interview, a second citation need not be sent. Any subsequent notice and forfeiture may extend not only to the conduct occurring subsequent to the citation of violation, but also to the initial conduct for which the notice of violation was sent and opportunity for personal interview given.

Paragraph (6) amends the present forfeiture limitation periods. It establishes two different limitation periods for forfeiture under the amended subsection. For persons holding a broadcast station license under title III of the Communications Act, no forfeiture liability shall attach for any violation occurring before the current license term or 1 year prior to the date the notice of apparent liability is issued, whichever is earlier. In no event can a notice be issued more than 3 years after the date of the violation. For everyone else, no forfeiture may attach to violations 1 year before the date of the notice issued.

### *Section 3.*

This section conforms section 504(a) of the Communications Act to new section 503(b)(3). A trial de novo in the Federal District Court by the Justice Department will not be necessary in the case of a section 503(b)(3) adjudicatory proceeding. This section also amends existing section 504(b) of the Communications Act which gives the Federal Communications Commission authority to mitigate or remit forfeitures. The FCC would be given new authority to remit or mitigate common carrier forfeitures imposed under title II of the Act. This would be in addition to existing authority to mitigate or permit forfeitures under parts II and III under title III (Maritime Radio Stations), new section 503(b) (General Forfeiture Provisions) and section 507 (Violations of the Great Lakes Agreement). It conforms section 504(a) to reflect the repeal of section 510 and it makes the decision to mitigate or remit forfeitures solely a function of the Commission's discretion by deleting the existing requirement that the person liable must apply for mitigation or remission.

*Section 4.*

This section repeals existing section 510 of the Communications Act of 1934 (47 U.S.C. 510), which provides for forfeitures applicable to nonbroadcast licensees and operators.

All of the offenses enumerated in section 510 are consolidated in amended section 503(b). The notice, limitation, maximum forfeiture amount and show cause procedures are amended and consolidated in proposed section 503(b) as discussed above. The requirement that the FCC provide an opportunity for a personal field interview to non-broadcast station licensees after issuing a notice of apparent liability is deleted.

*Section 5.*

This section provides that these amendments shall take effect 30 days after the date of enactment. Any act or omission which occurs prior to the effective date of this Act shall continue to be subject to forfeiture under the provisions of section 503(b) and 510 as then in effect.

## 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, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman) :

## COMMUNICATIONS ACT OF 1934

\* \* \* \* \*  
SEC. 503.

\* \* \* \* \*

[(b) (1) Any licensee or permittee of a broadcast station who—

(A) willfully or repeatedly fails to operate such station substantially as set forth in his license or permit,

(B) willfully or repeatedly fails to observe any of the provisions of this Act or of any rule or regulation of the Commission prescribed under authority of this Act or under authority of any treaty ratified by the United States,

(C) fails to observe any final cease and desist order issued by the Commission,

(D) violates section 317(c) or section 509(a) (4) of this Act, or

(E) violates section 1304, 1343, or 1464 of title 18 of the United States Code,

shall forfeit to the United States a sum not to exceed \$1,000. Each day during which such violation occurs shall constitute a separate offense. Such forfeiture shall be in addition to any other penalty provided by this Act.

(2) No forfeiture liability under paragraph (1) of this subsection (b) shall attach unless a written notice of apparent liability shall have been issued by the Commission and such notice has been received by the licensee or permittee or the Commission shall have sent such notice by registered or certified mail to the last known address of the licensee

or permittee. A licensee or permittee so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulations prescribe, why he should not be held liable. A notice issued under this paragraph shall not be valid unless it sets forth the date, facts, and nature of the act or omission with which the licensee or permittee is charged and specifically identifies the particular provision of provisions of the law, rule, or regulation or the license, permit, or cease and desist order involved.

(3) No forfeiture liability under paragraph (1) of this subsection (b) shall attach for any violation occurring more than one year prior to the date of issuance of the notice of apparent liability and in no event shall the forfeiture imposed for the acts or omissions set forth in any notice of apparent liability exceed \$10,000.■

(b) (1) *Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—*

(A) *willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;*

(B) *willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding upon the United States;*

(C) *violated any provision of section 317(c) or 509(a) of this Act; or*

(D) *violated any provision of section 1304, 1343, or 1464 of title 18, United States Code;*

*shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this Act; except that this subsection shall not apply to any conduct which is subject to forfeiture under title II, part II or III of title III, or section 507 of this Act.*

(2) *The amount of any forfeiture penalty determined under this subsection shall not exceed \$2,000 for each violation. Each day of a continuing violation shall constitute a separate offense, but the total forfeiture penalty which may be imposed under this subsection, for acts or omissions described in paragraph (1) of this subsection and set forth in the notice or the notice of apparent liability issued under this subsection, shall not exceed—*

(A) *\$20,000, if the violator is (i) a common carrier subject to the provisions of this Act, (ii) a broadcast station licensee or permittee, or (iii) a cable television operator; or*

(B) *\$5,000, in any case not covered by subparagraph (A).*

*The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.*

(3) (A) *At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice*

and an opportunity for a hearing before the Commission or on administrative law judge thereof in accordance with section 554 of title 5, United States Code. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review thereof pursuant to section 402(a).

(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.

(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;

(B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and

(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to section 504(a) of this Act.

(5) No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the notice required by paragraph (3) of this subsection or the notice of apparent liability required by paragraph (4) of this subsection, such person (A) is sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence; and (C) subsequently engages in conduct of the type described in such citation. The provisions of this paragraph shall not apply, however, if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required. Whenever the requirements of this paragraph are satisfied with respect to a particular person, such person shall not be entitled to receive any additional citation of the violation charged, with respect to any conduct of the type described in the citation sent under this paragraph.

(6) No forfeiture penalty shall be determined or imposed against any person under this subsection if—

(A) such person holds a broadcast station license issued under title III of this Act and if the violation charged occurred—

(i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or

(ii) prior to the date of commencement of the current term of such license,

whichever is earlier so long as such violation occurred within 3 years prior to the date of issuance of such required notice; or

(B) such person does not hold a broadcast station license issued under title III of this Act and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.

SEC. 504. (a) The forfeitures provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable, except as otherwise provided with respect to a forfeiture penalty determined under section 503(b)(3) of this Act, in a civil suit in the name of the United States brought in the district where the person or carrier has its principal operating office or in any district through which the line or system of the carrier runs: *Provided*, That any suit for the recovery of a forfeiture imposed pursuant to the provisions of this Act shall be a trial de novo: *Provided further*, That in the case of forfeiture by a ship, said forfeiture may also be recoverable by way of libel in any district in which such ship shall arrive or depart. Such forfeitures shall be in addition to any other general or specific penalties herein provided. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures under this Act. The costs and expenses of such prosecutions shall be paid from the appropriation for the expenses of the courts of the United States.

(b) The forfeitures imposed by [parts II and III of title III and section 503(b), section 507, and section 510] *title II, parts II and III of title III and sections 503(b) and 507* of this Act shall be subject to remission or mitigation by the Commission [upon application therefor,] under such regulations and methods of ascertaining the facts as may seem to it advisable, and, if suit has been instituted, the Attorney General, upon request of the Commission, shall direct the discontinuance of any prosecution to recover such forfeitures: *Provided, however*, That no forfeiture shall be remitted or mitigated after determination by a court of competent jurisdiction.

(c) In any case where the Commission issues a notice of apparent liability looking toward the imposition of a forfeiture under this Act, that fact shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdiction has ordered payment of such forfeiture, and such order has become final.

\* \* \* \* \*

**[FORFEITURE IN CASES OF VIOLATIONS OF CERTAIN RULES AND REGULATIONS**

SEC. 510. (a) Where any radio station other than licensed radio stations in the broadcast service or stations governed by the provisions of parts II and III of title III and section 507 of this Act—

(1) is operated by any person not holding a valid radio operator license or permit of the class prescribed in the rules and regulations of the Commission for the operation of such station;

(2) fails to identify itself at the times and in the manner prescribed in the rules and regulations of the Commission;

(3) transmits any false call contrary to regulations of the Commission;

(4) is operated on a frequency not authorized by the Commission for use by such station;

(5) transmits unauthorized communications on any frequency designated as a distress or calling frequency in the rules and regulations of the Commission;

(6) interferes with any distress call or distress communication contrary to the regulations of the Commission;

(7) fails to attenuate spurious emissions to the extent required by the rules and regulations of the Commission;

(8) is operated with power in excess of that authorized by the Commission;

(9) renders a communication service not authorized by the Commission for the particular station;

(10) is operated with a type of emission not authorized by the Commission;

(11) is operated with transmitting equipment other than that authorized by the Commission; or

(12) fails to respond to official communications from the Commission;

the licensee of the station shall, in addition to any other penalty prescribed by law, forfeit to the United States a sum not to exceed \$100. In the case of a violating of clause (2), (3), (5), or (6) of this subsection, the person operating such station shall, in addition to any other penalty prescribed by law, forfeit to the United States a sum not to exceed \$100. The violation of the provisions of each numbered clause of this subsection shall constitute a separate offense: *Provided*, That \$100 shall be the maximum amount of forfeiture liability for which the licensee or person operating such station shall be liable under this section for the violation of the provisions of any one of the numbered clauses of this subsection, irrespective of the number of violations thereof, occurring within ninety days prior to the date the notice of apparent liability is issued or sent as provided in subsection (c) of this section: *And provided further*, That \$500 shall be the maximum amount of forfeiture liability for which the licensee or person operating such station shall be liable under this section for all violations of the provisions of this section, irrespective of the total number thereof, occurring within ninety days prior to the date such notice of apparent liability is issued or sent as provided in subsection (c) of this section.

(b) The forfeiture liability provided for in this section shall attach only for a willful or repeated violation of the provisions of this section by any licensee or person operating a station.

(c) No forfeiture liability under this section shall attach after the lapse of ninety days from the date of the violation unless within such time a written notice of apparent liability, setting forth the facts which indicate apparent liability, shall have been issued by the Commission and received by such person, or the Commission has sent him such notice by registered mail or by certified mail at his last known address. The person so notified of apparent liability shall have the opportunity to show cause in writing why he should not be held liable and, upon his request, he shall be afforded an opportunity for a personal interview with an official of the Commission at the field office of the Commission nearest to the person's place of residence. ]

#### ESTIMATED COST OF THE LEGISLATION

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (2 U.S.C. 190j), the Committee estimates that no additional cost will accrue to the Government as a consequence of this legislation. The Committee is not aware of any estimate to the contrary.

#### TEXT OF 2343, AS REPORTED

That this Act may be cited as the "Communications Act Amendments of 1976".

SEC. 2. Section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) is amended to read as follows:

"(b) (1) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

"(A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

"(B) willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding upon the United States;

"(C) violated any provision of section 317 (c) or 509 (a) of this Act; or

"(D) violated any provision of section 1304, 1343, or 1464 of title 18, United States Code;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this Act; except that this subsection shall not apply to any conduct which is subject to forfeiture under title II, part II or III of title III, or section 507 of this Act.

"(2) The amount of any forfeiture penalty determined under this subsection shall not exceed \$2,000 for each violation. Each day of a continuing violation shall constitute a separate offense, but the total forfeiture penalty which may be imposed under this subsection, for acts or omissions described in paragraph (1) of this subsection and

set forth in the notice or the notice of apparent liability issued under this subsection, shall not exceed—

“(A) \$20,000, if the violator is (i) a common carrier subject to the provisions of this Act, (ii) a broadcast station licensee or permittee, or (iii) a cable television operator; or

“(B) \$5,000, in any case not covered by subparagraph (A).

The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

“(3) (A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof in accordance with section 554 of title 5, United States Code. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review thereof pursuant to section 402(a).

“(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.

“(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

“(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;

“(B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and

“(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to section 504(a) of this Act.

“(5) No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the notice required by paragraph (3) of this subsection or the notice of apparent liability required by paragraph (4) of this subsection, such person (A) is sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person’s place of residence; and (C) subsequently engages in conduct of the type described in such citation. The provisions of this paragraph shall not apply, however, if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required. Whenever the requirements of this paragraph are satisfied with respect to a particular person, such person shall not be entitled to receive any additional citation of the violation charged, with respect to any conduct of the type described in the citation sent under this paragraph.

“(6) No forfeiture penalty shall be determined or imposed against any person under this subsection if—

“(A) such person holds a broadcast station license issued under title III of this Act and if the violation charged occurred—

“(i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or

“(ii) prior to the date of commencement of the current term of such license,

whichever is earlier so long as such violation occurred within 3 years prior to the date of issuance of such required notice; or

“(B) such person does not hold a broadcast station license issued under title III of this Act and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.”

SEC. 3. (a) The first sentence of section 504(a) of the Communications Act of 1934 (47 U.S.C. 504(a)) is amended by inserting immediately after “recoverable” the following: “, except as otherwise provided with respect to a forfeiture penalty determined under section 503(b) (3) of this Act.”

(b) Section 504(b) of such Act is amended (1) by striking out “parts II and III of title III and section 503(b), section 507, and 510” and inserting in lieu thereof “title II, parts II and III of title III, and sections 503(b) and 507”; and (2) by striking out “, upon application therefor.”

SEC. 4. Section 510 of the Communications Act of 1934 (47 U.S.C. 510) is repealed in its entirety.

SEC. 5. The amendments made by this Act shall take effect on the 30th day after the date of enactment of this Act; except that the provisions of section 503(b) and 510 of the Communications Act of 1934, as in effect on such date of enactment, shall continue to constitute the applicable law with respect to any act or omission which occurs prior to such 30th day.

## AGENCY COMMENTS

OFFICE OF TELECOMMUNICATIONS POLICY,  
EXECUTIVE OFFICE OF THE PRESIDENT,  
*Washington, D.C., February 13, 1976.*

HON. WARREN G. MAGNUSON,  
*U.S. Senate,*  
*Washington, D.C.*

DEAR SENATOR MAGNUSON: This is in response to your request of January 15, 1976, for the views of the Office of Telecommunications Policy on S. 2343; a bill to amend sections 503 and 504, and to repeal section 510 of the Communications Act of 1934, as amended (47 U.S.C. §§ 503, 504, 510).

The purpose of this bill is to simplify the forfeiture provisions of the Communications Act of 1934, as amended, and to expand the scope of these provisions to include persons, such as community antenna television systems, subject to the Act but not presently subject to forfeitures. In addition, the limitation periods for issuance of a notice of apparent liability of the Commission would be extended, and the maximum amount of forfeiture that could be imposed for single or multiple offenses would be increased.

We have reviewed this legislation and have no objection to its enactment. The OMB advises that it has no objection to the submission of these comments.

Sincerely,

JOHN EGER, *Acting Director.*

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FEDERAL COMMUNICATIONS COMMISSION,  
*Washington, D.C., March 29, 1976.*

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

DEAR MR. CHAIRMAN: This is in response to your request for the Commission's comments on the statement submitted by the National Cable Television Association on S. 2343.

S. 2343 was introduced at the request of the Commission. It is the most important item in the Commission's legislative recommendations to the 94th Congress. Essentially, this bill would amend the Communications Act of 1934 to unify and strengthen the Commission's forfeiture authority.

Section 503 of the Communications Act now provides for forfeitures in the broadcast services, while section 510 provides separately for forfeitures applicable to non-broadcast radio stations. S. 2343 would repeal section 510 and place all classes of forfeitures under section 503. Additionally, section 503 would be enlarged in scope to cover persons subject to the Communications Act but not now under the forfeiture provisions—such as cable television systems, users of Part 15 or Part 18 devices, persons operating without a valid station or operator's license, and some communications equipment manufacturers.

We appreciate NCTA's agreement with the Commission that "[F]orfeiture is a legitimate weapon in the arsenal of a regulatory agency

which seeks to fairly enforce its rules." However, we must strongly disagree with NCTA's position that such forfeiture authority is "pre-mature" in light of the possibility of Congressional action on comprehensive cable legislation.

Cable legislation has been pending before the Congress since 1960 and we have no firm idea as to when such legislation may ever receive Congressional approval. Moreover, it is our belief that any legislation which may pass Congress will include some federal role in the regulation of the cable industry. Furthermore, the Supreme Court has clearly upheld federal jurisdiction over cable, and the fact that questions may be raised about the scope of that jurisdiction in no way validates violation of Commission rules today. We therefore believe that any delay in providing forfeiture authority to the Commission is unwarranted.

We should emphasize that, as is the case with broadcast licensees, only a small number of cable systems will ever present occasions for the imposition of forfeitures. The great majority wish to, and do, abide by our rules. However, we believe that forfeiture authority is absolutely necessary to our regulatory efforts to deter violations of our rules by this small number of systems. Without this authority, the Commission is limited to the cumbersome and time-consuming procedures of cease and desist proceedings and, if a cable television operator chooses to disregard a cease and desist order, enforcement must be through civil contempt proceedings by the Department of Justice. Such a procedure has not been an effective deterrent to violation of the Commission's rules.

While we disagree with this general position taken by NCTA, they have provided the Subcommittee with a number of suggested changes to improve S. 2343. Some of these suggestions are helpful and constructive and, we believe, an item-by-item analysis of NCTA's substantive comments on S. 2343 will be of value to the Subcommittee.

1. Subsection (b) (1) of S. 2343 concerns both violations of authorizations ((b) (1) (A)) and violations of rules ((b) (1) (B)). The standard for violation of authorizations under both the present and proposed statutes is "fails . . . substantially". There is presently no "substantially" element where violation of a rule is concerned. NCTA has noted that the only cable reference (the word "certificate") in Subsection (b) (1) is in the rule violation subpart. They have asked why the "substantially" test should not apply, since violation of an authorization (the cable certificate) is involved.

Since the certificate of compliance contains only perfunctory language about the obligations of a certificate holder, enforcement action would usually be directed against violation of a specific cable rule, not the general terms of a certificate. However, we agree that violation of an authorization, regardless of whether it is in the broadcast or cable services, should be dealt with under the same standard. Therefore, we suggest that, to avoid confusion, the word "certificate" should be deleted from subsection (b) (1) (B), and subsection (b) (1) (A) should be amended to read as follows:

"(A) willfully or repeatedly fails to comply substantially with the terms and requirements set forth in a license, permit, certificate, or other instrument or authorization issued by the Commission."

The effect of such change in language will be to make clear that, as an authorization, a certificate violation is subject to a "substantially" test, just like a broadcast license violation, but a rule violation, whether by a cable operator or a broadcaster, is not subject to such a test.

2. NCTA questions use of the standard of "willfully or repeatedly" in subsection (b) (1) and suggests that this standard should be changed to "willfully and repeatedly". The suggested purpose of this change is the deletion of possible forfeiture liability for repeated though non-willful violations.

"Willfully or repeatedly" is part of the present statutory language. The change suggested would therefore lessen the Commission's existing forfeiture authority. Furthermore, even though the stated purpose of the proposed change is the elimination of possible forfeiture liability for repeated though non-willful violations, that would not be its only effect. Rather, adoption of the language suggested by NCTA would deny forfeiture authority for single though willful violations. We must strongly oppose such a change.

NCTA has also stated that "Inadvertent violations have not normally been subject to Commission forfeiture actions" and that the proposed change in language should be made on this basis. This statement is inaccurate. In administering the present statute as to broadcast licensees and permittees, the Commission's present practice is to impose forfeitures for willful violations, with but few exceptions, only where the officers, directors or management-level employees had knowledge of the facts constituting the violation. Since the typical forfeiture proceeding does not involve a hearing, there is usually little evidence as to who had knowledge of the facts, other than the lower-level employee making log entries. Thus, most broadcast forfeiture orders rest on a finding of repeated violations. It is believed that this is appropriate. For example, if a standard (AM) broadcast station operates overpower, the listening public receives degraded service and/or the other stations receive interference because of the offending station's ignorance, carelessness or lack of adequate supervision. The forfeiture proceeding is an effective tool to discourage such ignorance, carelessness or lack of supervision. As the Commission stated in one of its earliest forfeiture proceedings:

Forfeitures were authorized to obtain greater compliance by licensees with the terms of their licenses and the Commission's rules, and to deter non-compliance. If serious, repeated violations are excused without sanction, the sanction of forfeiture will not be the effective tool it was intended to be. Rather than being deterred, licensees would be encouraged to continue violating rules and to depend upon excuses and promises to avoid liability. We intend to use the forfeiture proceeding, as we believe it was intended to be used, to impel broadcast licensees to become familiar with the terms of their licenses and the applicable rules, and to adopt procedures, including periodic review of operations, which will insure that stations will be operated in substantial compliance with their licenses and the Commission's rules. (Crowell-Collier Broadcasting Corp. 44 FCC 2444, 2449-50 (1961)).

The Commission urges, therefore, that the phrase "willfully or repeatedly" be retained.

3. NCTA has suggested that the proposed statute be amended to require that the source of the information as to the suspected violation be included in the notice of apparent liability.

Although the identity of a complainant is often known or made available to a Commission regulatee, the Commission strongly urges that such disclosure not be required, as suggested by NCTA. The Commission does not have the staff or resources to closely monitor day-to-day operation of all of the activities it regulates. Consequently, it relies heavily on information from the public or competing enterprises to uncover possible violations of the Communications Act, or applicable Commission policies and rules. Many complainants, rightly or wrongly, fear that if their identity is disclosed, they will be retaliated against. It should be noted in this regard that the Freedom of Information Act recognizes this concern by classifying documents from confidential sources as not routinely available for public inspection. See 5 U.S.C. 552(b) (7). Furthermore, we believe that due process is adequately met by providing date, facts, nature of act or omission, and specific rules or authorization involved. Analogies to discovery rules for hearing proceedings and witness lists in civil and criminal trials are inapposite, since it is clear that the proposed legislation does not envision a forfeiture proceeding as requiring that high level of due process (e.g., there is no provision for any oral presentations or cross-examination of witnesses). Of course, the Commission might elect, on a case-by-case basis, to provide more information (waiving an FOI exemption for good cause shown), but the Commission should not be obligated to do so.

4. NCTA has requested that the minimum time to respond to a notice of apparent liability be specified in the statute as 60 days. The present and proposed statute specify a "reasonable period" for response as prescribed by Commission rule or regulation.

The Commission is opposed to any change in this language since it provides the flexibility that is needed to insure sufficient, but not excessive, time for an adequate response. A statutory 60-day period would serve only to delay unnecessarily the processing of forfeitures.

The Subcommittee might wish to note that the present time for broadcast forfeiture proceedings is set at 30 days. (47 C.F.R. 1.621). The Commission and its staff routinely grant extensions of this period if needed by a station to prepare a full response. It is not believed that the present system presents any hardships or that cable operators will require more time than others to respond to Notices of Apparent Liability.

5. Subsection (b) (3) essentially provides a special procedural protection for those persons who may likely be unaware of Commission regulations. For such persons no forfeiture could attach unless prior to the issuance of a Notice of Apparent Liability the Commission has sent a notice of the violation and has provided an opportunity for a personal interview and the person has thereafter engaged in the prohibited conduct. This procedural protection would not be available to any person engaged in an activity that requires the holding of a "license, permit, certificate, or other authorization from the Commission, or is pro-

viding any service by wire subject to the Commission's jurisdiction". NCTA has criticized this last phrase "or is providing any service by wire subject to the Commission's jurisdiction" as vague and open to a construction which would exclude channel lessees or access channel users from the procedural protection provided by the subsection. That was not our intent. We are therefore amenable to clarification of this point either by inclusion of a statement to this effect in the Subcommittee's report or by deletion of the phrase "or is providing any service by wire subject to the Commission's jurisdiction" from subsection (b) (3).

6. NCTA has also criticized the second proviso of subsection (b) (3) which states that a person who is subject to the special procedural protection and has received a "notice of violation" will not receive another "notice of violation" if he thereafter engages in the "same conduct" for which the first notice was issued. Specifically, NCTA has suggested that the words "same conduct" are too broad and vague. As evidence of this they pose a hypothetical situation where "a channel lessee is adjudged to have presented obscene material, is subject to a Notice of Apparent Liability [sic—Notice of violation], and then displays a different program which is also suspected of being obscene". NCTA suggests that such a person should not be subject to a new Notice of Apparent Liability.

We believe that NCTA has misconstrued the purpose of the special procedural protection in subsection (b) (3). The special procedural protective device of an initial "notice of violation" is meant only to inform those persons who may likely be unaware of Commission regulations that those regulations exist and that their conduct is apparently in violation of them. Clearly, the Commission agrees with NCTA that obscenity is a particular difficult area of law. However, once a cable lessee has been notified of Commission rules on this subject, he would be in a position no different from that of any broadcaster or cable operator. This is, we believe, appropriate, and we would oppose any change in the language of the second proviso of subsection (b) (3).

7. NCTA has suggested that subsection (b) (4), the statute of limitations provision, raises a legal question as to the imposition of a forfeiture for conduct prior to the enactment of forfeiture legislation, and that an equitable argument can be made that the legislation should be prospective in nature since cable television has never been subject to forfeiture.

We think this position is unfounded. Further, we are not aware of any case law which raises a legal question as to this issue. When the original forfeiture statute was enacted in 1960, there was no "grandfathering" for conduct occurring prior to enactment of the legislation, and we do not believe that the result should differ in this instance. This legislation does not declare certain conduct to be illegal for the first time and no new rules are being imposed for which a penalty is being prescribed for prior conduct. The only point at issue is the penalty for illegal acts, which, we should add, have been illegal for many years.

8. NCTA's final criticism of S. 2343 is that subsection (b) (5) (A) (iii) is vague with respect to whether the legislation intends to reach others in addition to the actual cable operator.

Subsection (b) (5) (A) provides for a maximum forfeiture of \$20,000 for multiple violations by a common carrier, broadcast licensee or permittee or "(iii) a person engaged in distribution to the public of 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) (B) provides a \$5,000 maximum penalty for all other persons. The language in subpart (iii) was not meant to apply the \$20,000 limit to persons such as channel lessees, or public access users. Therefore, we would have no objection to inclusion of appropriate statements to this effect in the Subcommittee's report. Also, if it is the Subcommittee's wish, we would have no objection to the deletion of subpart (iii) if it is replaced with a new subpart (iii) with such language as "(iii) a cable television operator" or "(iii) a person engaged in cable television operations subject to the Commission's jurisdiction".

Additionally, I would like to point out that the Administrative Law Section of the American Bar Association has suggested that subsection (b) (4) (A), which extends the current statute of limitations for broadcast licensees to one year or the current license term, whichever is longer, may be unfair to those licensees whose terms may be extended beyond the regular three-year period because of pending adjudicatory proceedings.

It was never our intent to allow forfeiture liability to be imposed indefinitely in situations where a licensee's terms is extended. Therefore, we would recommend that subsection (b) (4) (A) be amended to read "(4) No forfeiture liability under paragraph (1) of this subsection (b) shall attach for any violation—(A) by any person holding a broadcast station license under title III of this Act if the violation occurred (i) more than one year prior to the date of the issuance of the notice of apparent liability or (ii) prior to the date beginning the current license term, whichever is earlier, but in no event more than three years prior to the date of the issuance of the notice of apparent liability."

Finally, let me close with the brief reiteration that this legislation is, in our opinion, vitally important to the Commission's regulatory efforts and, let me emphasize our hope that it will receive the Subcommittee's attention as soon as is possible.

Sincerely yours,

RICHARD E. WILEY, *Chairman.*

