

S. 1547

[Report No. 95-580]

IN THE SENATE OF THE UNITED STATES

MAY 17 (legislative day, MAY 16), 1977

Mr. HOLLINGS (for himself, Mr. PACKWOOD, Mr. SCHMITT, and Mr. ZORINSKY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

NOVEMBER 2 (legislative day, NOVEMBER 1), 1977

Reported by Mr. HOLLINGS, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the Communications Act of 1934, as amended, with respect to penalties and forfeitures, and to authorize the Federal Communications Commission to regulate pole attachments, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Communications Act
4 Amendments of 1977".

5 SEC. 2. Section 503 (b) of the ~~Communication~~ *Com-*
6 *munications* Act of 1934 (47 U.S.C. 503 (b)) is amended
7 to read as follows:

8 " (b) Any person who is determined by the Commis-

1 sion, in accordance with paragraph (3) or (4) of this sub-
2 section, to have—

3 “(A) willfully or repeatedly failed to comply sub-
4 stantially with the terms and conditions of any license,
5 permit, certificate, or other instrument or authorization
6 issued by the Commission;

7 “(B) willfully or repeatedly failed to comply with
8 any of the provisions of this Act or of any rule, regu-
9 lation, or order issued by the Commission under this Act
10 or under any treaty, convention, or other agreement to
11 which the United States is a party and which is binding
12 upon the United States;

13 “(C) violated any provision of section 317(c) or
14 509 (a) of this Act; or

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

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

23 “(2) The amount of any forfeiture penalty determined
24 under this subsection shall not exceed \$2,000 for each
25 violation. Each day of a continuing violation shall constitute

1 a separate offense, but the total forfeiture penalty which may
2 be imposed under this subsection, for acts or omissions de-
3 scribed in paragraph (1) of this subsection and set forth in
4 the notice or the notice of apparent liability issued under this
5 subsection, shall not exceed—

6 “(A) \$20,000, if the violator is (i) a common
7 carrier subject to the provisions of this Act, (ii) a broad-
8 cast station licensee or permittee, or (iii) a cable televi-
9 sion operator; or

10 “(B) \$5,000, in any case not covered by subpara-
11 graph (A).

12 The amount of such forfeiture penalty shall be assessed by the
13 Commission, or its designee, by written notice. In determin-
14 ing the amount of such a forfeiture penalty, the Commission
15 or its designee shall take into account the nature, circum-
16 stances, extent, and gravity of the prohibited acts, *acts com-*
17 *mited* and, with respect to the violator, the degree of
18 culpability, any history of prior offenses, ability to pay, and
19 such other matters as justice may require.

20 “(3) (A) At the discretion of the Commission, a for-
21 feiture penalty may be determined against a person under
22 this subsection after notice and an opportunity for a hearing
23 before the Commission or an administrative law judge thereof
24 in accordance with section 554 of title 5, United States Code.
25 Any person against whom a forfeiture penalty is determined

1 under this paragraph may obtain review thereof pursuant to
2 section 402 (a).

3 “(B) If any person fails to pay an assessment of a for-
4 feiture penalty determined under subparagraph (A) of this
5 paragraph, after it has become a final and unappealable order
6 or after the appropriate court has entered final judgment in
7 favor of the Commission, the Commission shall refer the mat-
8 ter to the Attorney General of the United States, who shall
9 recover the amount assessed in any appropriate district court
10 of the United States. In such action, the validity and appro-
11 priateness of the final order imposing the forfeiture penalty
12 shall not be subject to review.

13 “(4) Except as provided in paragraph (3) of this sub-
14 section, no forfeiture penalty shall be imposed under this sub-
15 section against any person unless and until—

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

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

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

1 Such a notice shall (i) identify each specific provision, term,
2 and condition of any Act, rule, regulation, order, treaty,
3 convention, or other agreement, license, permit, certificate,
4 instrument, or authorization which such person apparently
5 violated or with which such person apparently failed to com-
6 ply; (ii) set forth the nature of the act or ~~mission~~ *omission*
7 charged against such person and the facts upon which such
8 charge is based; and (iii) state the date on which such con-
9 duct occurred. Any forfeiture penalty determined under this
10 paragraph shall be recoverable pursuant to section 504 (a) of
11 this Act.

12 “(5) No forfeiture liability shall be determined under
13 this subsection against any person, if such person does not
14 hold a license, permit, certificate, or other authorization
15 issued by the Commission, unless, prior to the notice required
16 by paragraph (3) of this subsection or the notice of apparent
17 liability required by paragraph (4) of this subsection, such
18 person (A) is sent a citation of the violation charged; (B)
19 is given a reasonable opportunity for a personal interview
20 with an official of the Commission, at the field office of the
21 Commission which is nearest to such person’s place of resi-
22 dence; and (C) subsequently engages in conduct of the type
23 described in such citation. The provisions of this paragraph
24 shall not apply, however, if the person involved is engaging

1 in activities for which a license, permit, certificate, or other
2 authorization is required. Whenever the requirements of this
3 paragraph are satisfied with respect to a particular person,
4 such person shall not be entitled to receive any additional
5 citation of the violation charged, with respect to any conduct
6 of the type described in the citation sent under this para-
7 graph.

8 “(6) No forfeiture penalty shall be determined or im-
9 posed against any person under this subsection if—

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

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

16 “(ii) prior to the date of commencement of the
17 current term of such license,
18 whichever is earlier so long as such violation occurred
19 within 3 years prior to the date of issuance of such re-
20 quired notice; or

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

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

7 (b) Section 504 (b) of such Act is amended (1) by
 8 striking out "parts II and III of title III and section 503
 9 (b), section 507, and *section 510*" and inserting in lieu
 10 thereof "title II, parts II and III of title III, and sections
 11 503 (b) and 507"; and (2) by striking out ", upon
 12 application therefor,".

13 SEC. 4. Section 510 of the Communications Act of 1934
 14 (47 U.S.C. 510) is repealed in its entirety.

15 SEC. 5. Title II of the Communications Act of 1934 is
 16 amended by adding at the end thereof the following new
 17 section:

18 "REGULATIONS OF POLE ATTACHMENTS

19 "SEC. 224. (a) As used in this section:

20 "(1) The term 'utility' means any person who provides
 21 telephone service or electric energy to the public and who
 22 owns or controls poles, ducts, conduits, or rights of way used,
 23 in whole or in part, for wire communication. Such term does
 24 not include any person owned by the Federal Government.

25 "(2) The term 'Federal Government' means the Gov-

1 ernment of the United States or any agency or instrumen-
2 tality thereof.

3 “(3) The term ‘pole attachment’ means any attachment
4 for wire communication on a pole, duct, conduit, or other
5 right of way owned or controlled by a utility.

6 “(b) The Commission shall regulate the rates, terms,
7 and conditions for pole attachments in any case where the
8 same are not regulated by any State authority. A just and
9 reasonable rate, whether prescribed by the Commission or
10 State authority, shall assure the utility the recovery of not
11 less than the additional costs of providing pole attachments
12 nor more than the actual capital and operating expenses of
13 the utility attributable to that portion of the pole, duct, or
14 conduit used by the pole attachment. Such portion shall be
15 the percentage of the total usable space on a pole (that is,
16 the space above the minimum grade level that can be used
17 for the attachment of wires and cables), or the total capacity
18 of duct or conduit, that is occupied by the pole attachment.”

19 *SEC. 5. Section 2(b) of the Communications Act of*
20 *1934 (47 U.S.C. 152(b)) is amended by striking the word*
21 *“Subject” and inserting in lieu thereof the following “Except*
22 *as provided in section 224 and subject”.*

23 *SEC. 6. Title II of the Communications Act of 1934 is*
24 *amended by adding at the end thereof the following new*
25 *section:*

1 *“REGULATIONS OF POLE ATTACHMENTS*

2 *“SEC. 224. (a) As used in this section:*

3 *“(1) The term ‘utility’ means any person whose rates*
4 *or charges are regulated by the Federal Government or a*
5 *State and who owns or controls poles, ducts, conduits, or*
6 *rights-of-way used, in whole or in part, for wire communi-*
7 *cation. Such term does not include any railroad, any person*
8 *who is cooperatively organized, or any person owned by the*
9 *Federal Government or any State.*

10 *“(2) The term ‘Federal Government’ means the Gov-*
11 *ernment of the United States or any agency or instrumenta-*
12 *lity thereof.*

13 *“(3) The term ‘State’ means any State, territory, or*
14 *possession of the United States, the District of Columbia, or*
15 *any political subdivision, agency, or instrumentality thereof.*

16 *“(4) The term ‘pole attachment’ means any attachment*
17 *by a cable television system to a pole, duct, conduit, or right-*
18 *of-way owned or controlled by a utility.*

19 *“(b) (1) Subject to the provisions of subsection (c) of*
20 *this section, the Commission shall regulate the rates, terms,*
21 *and conditions for pole attachments to provide that such*
22 *rates, terms, and conditions are just and reasonable, and shall*
23 *adopt procedures necessary and appropriate to hear and*
24 *resolve complaints concerning such rates, terms, and condi-*
25 *tions. For purposes of enforcing any determinations result-*

1 *ing from complaint procedures established pursuant to this*
2 *subsection, the Commission shall take such action as it deems*
3 *appropriate and necessary, including issuing cease and desist*
4 *orders, as authorized by section 312(b) of title III of the*
5 *Communications Act of 1934, as amended.*

6 “(2) *Within 180 days from the date of enactment of this*
7 *section the Commission shall prescribe by rule regulations to*
8 *carry out the provisions of this section.*

9 “(c)(1) *Nothing in this section shall be construed to*
10 *apply to, or to give the Commission jurisdiction with respect*
11 *to rates, terms, and conditions for pole attachments in any*
12 *case where such matters are regulated by a State.*

13 “(2) *Any State which regulates the rates, terms, and*
14 *conditions for pole attachments shall certify to the Commis-*
15 *sion that it regulates the rates, terms, and conditions for pole*
16 *attachments.*

17 “(d)(1) *For purposes of subsection (b) of this section,*
18 *a rate is just and reasonable if it assures a utility the recovery*
19 *of not less than the additional costs of providing pole attach-*
20 *ments, nor more than an amount determined by multiplying*
21 *the percentage of the total usable space, or the percentage of*
22 *the total duct or conduit capacity, which is occupied by the*
23 *pole attachment by the sum of the operating expenses and*
24 *actual capital costs of the utility attributable to the entire pole,*
25 *duct, conduit, or right-of-way.*

1 “(2) As used in this subsection, the term ‘usable space’
2 means the space above the minimum grade level which can
3 be used for the attachment of wires, cables, and associated
4 equipment.

5 “(e) Upon the expiration of the 5-year period that begins
6 on the date of enactment of this Act the provisions of subsec-
7 tion (d) of this section shall cease to have any effect.”.

8 SEC. 6. 7. The amendments made by this Act shall take
9 effect on the thirtieth day after the date of enactment of this
10 Act; except that the provisions of sections 503 (b) and 510
11 of the Communications Act of 1934, as in effect on such date
12 of enactment, shall continue to constitute the applicable law
13 with the respect to any act or omission which occurs prior to
14 such thirtieth day.

Calendar No. 534

95TH CONGRESS
1ST SESSION

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