

# S. 1547

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IN THE SENATE OF THE UNITED STATES

MAY 17 (legislative day, MAY 16), 1977

Mr. HOLLINGS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## 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 Act of  
6       1934 (47 U.S.C. 503 (b)) is amended to read as follows:

7       “(b) Any person who is determined by the Commis-  
8       sion, in accordance with paragraph (3) or (4) of this  
9       subsection, to have—

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

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

11          “(C) violated any provision of section 317 (c) or  
12          509 (a) of this Act; or

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

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

21          “(2) The amount of any forfeiture penalty determined  
22          under this subsection shall not exceed \$2,000 for each vio-  
23          lation. Each day of a continuing violation shall constitute  
24          a separate offense, but the total forfeiture penalty which may  
25          be imposed under this subsection, for acts or omissions de-

1 scribed in paragraph (1) of this subsection and set forth in  
2 the notice or the notice of apparent liability issued under this  
3 subsection, shall not exceed—

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

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

10 The amount of such forfeiture penalty shall be assessed by  
11 the Commission, or its designee, by written notice. In deter-  
12 mining the amount of such a forfeiture penalty, the Commis-  
13 sion or its designee shall take into account the nature,  
14 circumstances, extent, and gravity of the prohibited acts,  
15 committed and, with respect to the violator, the degree of  
16 culpability, any history of prior offenses, ability to pay, and  
17 such other matters as justice may require.

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

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

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

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

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

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

24      Such a notice shall (i) identify each specific provision, term,  
25      and condition of any Act, rule, regulation, order, treaty,

1 convention, or other agreement, license, permit, certificate,  
2 instrument, or authorization which such person apparently  
3 violated or with which such person apparently failed to com-  
4 ply; (ii) set forth the nature of the act or mission charged  
5 against such person and the facts upon which such charge  
6 is based; and (iii) state the date on which such conduct oc-  
7 curred. Any forfeiture penalty determined under this para-  
8 graph shall be recoverable pursuant to section 504 (a) of this  
9 Act.

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

1 such person shall not be entitled to receive any additional  
2 citation of the violation charged, with respect to any conduct  
3 of the type described in the citation sent under this paragraph.

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

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

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

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

14 whichever is earlier so long as such violation occurred  
15 within 3 years prior to the date of issuance of such re-  
16 quired notice; or

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

22 SEC. 3. (a) The first sentence of section 504 (a)  
23 the Communications Act of 1934 (47 U.S.C. 504 (a))  
24 amended by inserting immediately after “recoverable”  
25 following: “, except as otherwise provided with respect to

1 forfeiture penalty determined under section 503 (b) (3) of  
 2 this Act.”.

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

8 SEC. 4. Section 510 of the Communications Act of 1934  
 9 (47 U.S.C. 510) is repealed in its entirety.

10 SEC. 5. Title II of the Communications Act of 1934 is  
 11 amended by adding at the end thereof the following new  
 12 section:

13 “REGULATIONS OF POLE ATTACHMENTS

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

15 “(1) The term ‘utility’ means any person who provides  
 16 telephone service or electric energy to the public and who  
 17 owns or controls poles, ducts, conduits, or rights-of-way used,  
 18 in whole or in part, for wire communication. Such term does  
 19 not include any person owned by the Federal Government.

20 “(2) The term ‘Federal Government’ means the Gov-  
 21 ernment of the United States or any agency or instrumen-  
 22 tality thereof.

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

95TH CONGRESS  
1ST SESSION

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