

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C. 74515

April 18, 1952

INTER-OFFICE MEMORANDUM

FOR: Information

TO: Commission

FROM: General Counsel

SUBJECT: Analysis of provisions of S. 658, a bill to amend the Communications Act of 1934, as reported out by the House Committee on Interstate and Foreign Commerce.

1. On April 4, 1952, the House Committee on Interstate and Foreign Commerce reported out S. 658, the McFarland bill. This bill was passed by the Senate and has been substantially changed in certain respects by the House Committee. There is attached hereto an analysis of the bill, section by section, comparing it with the present Act, the version passed by the Senate, the Commission's proposed revision of the Senate version, and estimating, in so far as is possible, its effect upon the Commission if passed.

2. It is believed that the House may act upon the bill at any time after April 22, 1952, and this analysis is submitted to aid the Commission in determining whether any further action should be taken by the Commission at this time.

B. P. Cottone
Benedict P. Cottone
General Counsel

Attachment

DRohlbaum:RDGreenberg:RASolemon:nbm:m:bht:fls/OGC

*Sec Gen Council Information Memo to Commission
for April 19, 1952 Memo No. 74575*

SECTION BY SECTION ANALYSIS OF HOUSE VERSION OF S. 658

4/18/52

Section 1. This section is the title of the bill.

Section 2. Section 2 amends paragraph (c) of Section 3 of the Communications Act to define "broadcasting" as "the dissemination of radio communications intended to be received directly by the public." This definition is the same as that in S. 658 as passed by the Senate and the Commission's proposal, except that it omits the word "general" before "public". The House committee report says "general" was left out because there might be doubt as to the intended significance of the change, which had been made by the Senate committee to conform with provisions of the Atlantic City Treaty. Inclusion of the word "general" might have caused confusion in connection with subscription services such as phonevision, which is now under study by the staff. The new section 3(c) therefore merely omits the mention of relay stations now contained in the Act.

Section 3. This section adds new definitions to Section 3 of the Act. It defines "station license", "license" and "radio station license" as do S. 658 and the Commission's proposal, thus making clear that any special or temporary authorization would be considered as a license. It also defines a broadcast station, as do the Senate version of S. 658 and the Commission's proposal, as "a radio station equipped to engage in broadcasting as herein defined." It also defines "construction permit" to refer, as do the Senate version of S. 658 and the Commission's proposal, to any instrument of authorization required for the construction of a station, or the installation of apparatus, for the transmission of energy, whatever name the Commission may give it. Reference in the new bill to "construction of a station" is new, but appears to be merely a clarifying revision.

Section 4. (a) This provision would amend Section 4(b) of the Act by adding after the prohibition against Commissioners engaging in any other business, vocation or employment, a proviso that the prohibition shall not apply to the preparation of technical or professional publications for which a reasonable honorarium or compensation may be accepted. The House bill eliminates the prohibition in the Senate version which would prevent any Commissioner who had not served his full term from representing anyone before the Commission in a professional capacity for one year after leaving the Commission. The House provision is the same as that contained in the Commission's version of the bill, and strongly urged in the Commission's comments.

(b). This section amends Section 4(f) of the Act, by striking out the existing provision which authorizes the Commission to appoint certain staff officers without regard to the Civil Service Act or the Classification Act and substitutes a provision authorizing the Commission to appoint such employees as may be necessary in accordance with the Civil Service Act and Classification Act. This amendment merely conforms Section 4(f)(1) to the changes made by laws enacted subsequent to the Communications Act, but which did not specifically amend that Act.

This section also adds a provision that each Commissioner may without regard

to Civil Service Laws, but subject to the Classification Act appoint and fix the salary of one professional assistant. This provision is in accord with view expressed by the Commission, except that the recommendation that each Commissioner also be authorized to appoint a secretary has, for undisclosed reasons, not been adopted.

(c). This provision enlarges Section 4(g) of the Act to authorize expenditures for land for monitoring stations and related facilities; for constructing such stations; and for equipping, furnishing and maintaining such stations and laboratories and related facilities (including construction of minor subsidiary buildings costing less than \$25,000 each) used for research. This amendment is identical to the one originally submitted to Congress by the Commission.

(d). This provision would amend Section 4(k) of the Act by requiring the Commission to submit certain information to the Congress in its annual report which is not now required. It is substantially identical to the provision contained in the Commission's version of the bill, but still retains a provision to which the Commission objected, requiring it, in its annual reports, to include information as to legislative recommendations submitted to the Bureau of the Budget for its clearance but not yet approved.

Section 5. Section 5 of S. 658 amends the existing provisions of Section 5 of the Communications Act in the following respects:

1. A new section is added stating that the Chairman of the Commission shall preside at meetings and sessions of the Commission, represent it in matters dealing with legislation or requiring conferences or communications with other government offices, and generally coordinate and organize the work of the Commission to promote prompt and efficient disposition of all matters within Commission jurisdiction. It is expressly provided, however, that all other commissioners may present their own minority or supplemental views on all proposed legislation. The provision is identical with a similar provision of the McFarland Bill as it passed the Senate and was approved unanimously by the Commission in its comments on the Senate version of the bill. As written, it would not appear to involve any significant changes in Commission organization or procedures now established under the existing Act and under the Commission's Administrative Order No. 8.

2. Section 5(b) of the bill requires that within six months of the enactment of the bill the Commission is to organize its staff into integrated bureaus and into such other divisional organizations as it may deem necessary. It also provides that integrated bureaus shall include all necessary legal, engineering and accounting personnel as are necessary. It is identical with similar provisions of S. 658 as passed by the Senate and with the language incorporated in the Commission's proposed redraft of the Senate bill, except for the fact that the Commission's proposed revision would have allowed twelve months for completing the reorganization instead of the six months provided in the House version of the bill. Since, in the meantime, the Commission has reorganized itself in exactly the manner required by the bill, the change in time from twelve months to six months would not appear to be important. It should be noted, however, that in commenting upon this provision to the House Committee, Commissioner Hennock stated that she was of the opinion that the functional organization

setup should not be made mandatory but should be left to the Commission's discretion as under the existing law. Enactment of the provisions would not appear to require any changes in the Commission's present organizational setup.

3. Section 5(c) of the bill requires the Commission to establish a special review staff consisting of legal, engineering, accounting, and other necessary personnel. The staff is to be an independent one directly responsible to the Commission and not under the supervision of any other Commission employees. Its sole job is to assist the Commission in cases of adjudication which have been designated for hearing and its functions in this respect are limited to the following three categories:

(a) To prepare, without recommendations, a summary of evidence presented at such hearing;

(b) To prepare, without recommendations, prior to oral argument, a compilation of facts material to the exceptions to the initial decisions of examiners and the replies which have been filed thereto; and

(c) To prepare for the Commission or any of its members, without recommendations and in accordance with specific directions, memoranda, opinions, decisions and orders. These three functions can only be performed by members of the review staff or by one of the professional assistants appointed by, and responsible to, the individual Commissioners.

This provision is an expansion and clarification of a similar provision which appeared in the Senate version of the McFarland Bill, and is not in accordance with the views expressed by the majority of the Commission with respect to that bill. While Commissioner Jones had stated his disagreement with the Commission majority on this point, the Commission majority had stated that it believed that it should be free, in adjudicatory proceedings, to consult with members of its staff not engaged in prosecutory or investigatory functions.

As the provision is written, it would appear to require substantial revision of present Commission procedures in adjudicatory proceedings. For these procedures, as established by the Commission, do allow it to consult in hearing cases with the General Counsel, Chief Engineer, Chief Accountant and members of their staffs. Moreover, the functions of the existing Office of Opinion and Review would be substantially restricted if the bill were to be enacted into law. Not only could this office not consult with the Commission in any advisory capacity, as it now may do, but, both with respect to disputed findings of fact and disputed conclusions, this office would not be permitted to recommend the proper resolution of any of the specific conflicts raised either in exceptions to initial decisions or in interlocutory motions brought to the Commission for a decision in hearing cases. The Commission could, presumably, under the proposed provisions, specifically direct the review staff to prepare memoranda of law or engineering with respect to any particular issue or issues involved in a hearing case, so long as such memoranda contained no recommendations not themselves directed by the Commission. The result would appear to be, however, that a Commissioner, assisted only by a single professional assistant, would be required in the first instance to resolve each and every such conflict as might be raised either in exceptions to initial decisions, in interlocutory motions in hearing

cases, or in petitions for rehearing of hearing cases filed pursuant to the provisions of Section 405 of the Communications Act.

In this respect it should be pointed out that Section 4(b) of the bill, which provides for the appointment of professional assistants by each of the Commissioners, expressly limits each Commissioner to one professional assistant. Under the bill as written, therefore, it would appear that while Commissioners might appoint more than one professional assistant to work in their immediate offices, only one of such appointees might be permitted to consult with the Commissioner in adjudicatory proceedings or make recommendations to him in such proceedings.

4. Of equal importance in determining the extent to which the provision of the House bill would require separation of the Commission from its staff are the provisions of the proposed new Section 409(c) (2) and (3) contained in Section 15 of the bill. (Section 15 is discussed at this point because of its close relationship to the provisions of Section 5.) The first of these provisions prohibits any Commissioner and his professional assistant from consulting on any fact or question of law in issue in any adjudicatory proceeding, or receiving any recommendations from any person, except upon notice and opportunity of all parties in the proceeding to participate. The only exceptions to this restriction are that the Commissioners may consult among themselves or with their own assistants, (but not with the professional assistant of any other Commissioner), and may utilize the services of the review staff to the limited extent permitted by Section 5 of the bill. Subsection 3, an apparently redundant provision, buttresses this up by prohibiting Commission investigatory or prosecutory personnel, or the personnel engaged in court litigation, from advising or consulting with the Commission in adjudicatory proceedings.

It should be pointed out that this provision is broader than the provision of the McFarland Bill as it passed the Senate. For it not only prohibits Commissioners and their assistants from consulting with members of the Commission's staff in adjudicatory proceedings, but also prohibits them from consulting with any other person, including the private parties to such proceedings, or their attorneys or engineers. Under the terms of the bill, such isolation would commence at the time any case is designated for hearing. Since it prohibits the Commissioners, or their assistants, from receiving any recommendations, as well as from consulting with any person, presumably it would prohibit the Commissioners from receiving any letters concerning hearing cases or at least require a Commissioner who receives letters containing any such recommendations, to make them available to all other parties in the proceeding.

5. Section 15(a) of the bill contains a provision identical with that contained in the Senate version amending Section 409(a) of the Communications Act to eliminate the provisions which now require Commissioners to sit as examiners in certain types of proceedings, such as revocation proceedings. This aspect of the change was approved by the Commission in its comments on the bill. The House bill, however, also contains a provision which was not approved by the Commission, which prohibits individual Commissioners from sitting as hearing examiners and requires that hearings be heard either by one of the examiners appointed pursuant to the provisions of Section 11 of the Administrative Procedure Act or by the Commission as a whole. The purpose behind this amendment

was that the Commission would be reluctant to overrule one of its members. The Commission had pointed out that the record in previous cases does not support any such conclusion and that there may be circumstances in which it is advisable or useful to have a Commissioner, rather than an examiner, sit as the hearing officer. Since this would be prohibited by the bill and since it is obviously impracticable, save in the most extraordinary circumstances, for the Commission as a whole to sit as an examiner in hearing cases, the result of the passage of this provision would appear to be to reinforce the already pressing need of the Commission to secure additional examiners.

6. The proposed Section 409(b) set forth in Section 15 of the bill as revised by the House Committee, adopts certain suggestions which had been made by the Commission with respect to the preparation of initial decisions. The McFarland Bill, as passed by the Senate, required the examiner who hears a proceeding to prepare an initial decision. The Commission pointed out that provision should be made for circumstances in which the examiner becomes unavailable and cannot prepare the initial decision or for situations requiring great expedition where the Commission may wish to order the record to be certified to it for drafting of the initial decision. The House adopted this suggestion and the bill contains an exception in the case "where the hearing officer becomes unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decisions." The first part of this language is ambiguous for it does not make clear whether in cases of examiner unavailability the preparation of an initial decision is to be delegated to another examiner or, as has been consistent Commission practice in the past, certified to the Commission for the preparation of initial decision by the Commission itself. But, in any event, if the review staff of the Commission is to be limited to analyzing arguments and extracting relevant material from hearing records, without recommendation, then it would appear, as a practical matter, that there will not be any situations where the Commission will be able to prepare an initial decision. This is true particularly since under the proposed bill it would apparently not be possible to delegate the drafting of an initial decision to an individual Commissioner. It would appear, therefore, that as a practical matter, where the examiner who hears a proceeding either becomes unavailable or for other reasons cannot expeditiously draft and issue his initial decision the only solution will be to assign the record to another examiner.

7. The bill also contains provisions, which were in the McFarland Bill as passed by the Senate, prohibiting examiners, in the conduct of their hearings, from consulting with any person except upon notice and opportunity for all parties to participate, and providing that in the performance of their duties, examiners shall not be responsible or subject to the direction of persons engaged in the performance of investigative or prosecutory, or other functions of the Commission, or any other agency. The Commission in its comments on the Senate bill, had suggested that a proviso be added stating that examiners might be subject to the supervision of a member of the Commission or a chief examiner for administrative purposes relating to the performance of their duties. This suggestion has not been adopted however and the absence of such language throws doubt upon the authority of the Commission, under the provision of the bill, to

appoint a chief examiner. It should be noted, however, that such doubt has also been cast upon the Commission's authority, independently of this bill, by a recent decision of the federal district court in the case of Federal Trial Examiners Conference v. Ransbeck, (case no. 5171-51, U.S.D.C., D.C.). In addition, the House draft of the bill contains a provision prohibiting examiners from advising or consulting with the Commission or any of its staff with respect to an initial decision or the exceptions filed thereto.

8. Section 5 of the bill also reinstates, at the suggestion of the Commission, the language of the existing Section 5 of the Communications Act authorizing the Commission to divide itself into panels. Moreover, Section 5(e) of the bill constitutes a general revision of the language of Section 5(e) of the present Act relating to delegation of authority by the Commission. In essence, the revised provisions permits the reference of any portion of the Commission's business, except action on hearing cases in adjudicatory proceedings, either to an individual Commissioner, or to a board of Commission employees, with authority given to the Chairman of the Commission to designate the Commissioner or employee to serve temporarily where the appointed delegate is absent or unavailable. Persons operating pursuant to such delegation can take all actions which the Commission could itself take and their actions will have the same force and effect as if they had been taken by the Commission itself. The action of any Commissioner or employee delegated to act for the Commission as a whole is expressly made subject to a petition for rehearing directed to the Commission as a whole pursuant to Section 405 of the Act.

The revised delegation section appears to be an improvement over the confusing language of the existing Act and is not in substantial conflict with any of the suggestions made by the Commission in its comments upon the Senate bill. The only significant change from existing law eliminates the provision in the present Act whereby the action of a person delegated to act for the Commission panel may be reviewed upon petition by the Commission panel, and subsequently, upon another petition, by the Commission as a whole, and does not appear to raise any substantial problems. For even if the Commission were, at some subsequent date, to organize itself into panels there would appear to be no serious problems involved in requiring petitions for rehearing of actions by persons delegated to act for a panel to be considered directly by the Commission as a whole in the first instance rather than being required to be first heard by the panel.

Section 6. This section relates to license renewals. The new 307(d) here proposed omits the present language to the effect that action with respect to renewals shall be governed by the same considerations and practices affecting the grant of original applications. The new section provides that renewals may be granted if the Commission finds that the public interest, convenience and necessity would be served thereby. It further provides that, with respect to broadcasting renewals, the Commission shall not require any applicant to file information which has previously been furnished, or which is not directly material to the considerations affecting grant or denial of the application. Finally, subsection (a) of Section 6 provides that the license shall be continued in effect pending hearing and final decision on such an application and the disposition of a petition for rehearing pursuant to Section 405. The change concerning the handling of renewal applications was in the Senate version of S. 308 and was

opposed by the Commission, partly on the ground that in conjunction with Section 13 of S. 658, which put upon the Commission the burden of proceeding with the evidence and substantiating the grounds specified in the notice of hearing, the proposal provided for grant of a renewal unless it could affirmatively be shown that a grant was not in the public interest. The House version of S. 658 does not contain the provision with respect to burden and to that extent meets the Commission objection. The Commission, however, had also stated that it opposed the change in language even without the shift in burden of proof, because it raised a substantial question as to whether licensees, including non-broadcast licensees, were being afforded a type of permanent franchise, conditioned only upon meeting minimum qualifications, and whether grants could be made at renewal time to competing applicants with superior qualifications. The new House committee revision of S. 658 apparently attempts to clear up this doubt by a provision, discussed below, relating to grants to new applicants of the facilities of existing licensees who are up for renewal, and also by the deletion of the burden of proof section.

The provisions with respect to the information to be filed are new and it is difficult to predict their effect, if any, on present Commission forms or requirements. It would not, however, prevent the Commission from securing all information necessary to a determination as to whether a license renewal would serve the public interest. The last provision merely duplicates the provisions of the Administrative Procedure Act.

Section 6 of the House committee version of S. 658 also contains a new section 307(f) of the Act, which provides that when a renewal is not granted, but another applicant is granted the same or mutually exclusive facilities, the grant of a station license to the other applicant shall be conditioned, upon request of the applicant for renewal, upon the purchase by the other applicant of the physical plant and equipment of the old licensee, at a fair value to be determined by the Commission. This provision is operable only if the applicant for renewal has operated substantially as set forth in the license and has not wilfully violated the Act, Commission rules or a treaty. This provision appears to put the difficult burden upon the Commission of determining the value of station plant and equipment. It also appears to be inconsistent with the traditional concept of the Communications Act that there is no property right in a license. Its execution would, furthermore, be extremely impractical, if not impossible in those instances where the new applicant is constructing his station in a city different from that of the station of the applicant for renewal, but is mutually exclusive with the renewal application, since the new applicant might have no conceivable use for the fixed part of a station plant in another city.

Section 7. This section would amend Section 308(a) of the Act to provide, for all services, for the grant of construction permits, licenses, and modifications or renewals thereof, without the filing of a formal application, (1) in cases of emergency involving danger to life or property or due to damage to equipment, (2) during a proclaimed national emergency or war, when necessary for the national defense or security or furtherance of the war effort, or (3) in cases of emergency in the nonbroadcast services when the normal licensing procedure would not be feasible. The authorizations are limited to the period of the

emergency or war. The present section 308(a) is limited to licenses, renewals and modifications for stations on vessels or aircraft and provides for 3 month licenses in cases of emergency. This provision is substantially the same as the Senate version of S. 658 with the added provision with respect to the non-broadcast services suggested by the Commission. The Commission had no objection to this provision.

Section 7 also amends subsection (b) of Section 308 so that it relates to "all applications for station licenses, or modifications or renewals thereof" instead of "all such applications." This appears to be merely an editorial change.

An important new subsection (d) is also added to Section 308 to provide:

"The Commission shall not make or promulgate any rule or regulation, of substance or procedure, the purpose or result of which is to effect a discrimination between persons based upon interest in, association with, or ownership of any medium primarily engaged in the gathering and dissemination of information and no application for a construction permit or station license, or for the renewal, modification, or transfer of such a permit or license, shall be denied by the Commission solely because of any such interest, association, or ownership."

It is not possible to determine exactly what effect this provision would have upon the Commission's past policy, which has been sustained in court in the face of charges that it constitutes improper discrimination, of considering newspaper ownership a comparative, but not a disqualifying factor. Newspaper ownership might be the sole factor of difference in a comparative hearing. Although, on its face, the provision could also be construed to strike at the multiple ownership rules, since there the "discrimination" is also based on ownership of a medium of mass communications which might conceivably be construed to be "primarily engaged in the gathering and dissemination of information"; the committee report on the bill states that it is intended to apply to newspapers. How a court might construe the provision in regard to these two areas of ambiguity is a matter of some doubt.

Section 8. This section proposes extensive amendments to Section 309(a) of the Act with respect to action upon, form of, and conditions attached to licenses. The House proposal is virtually identical with the Senate version.

Section (a) of the proposal provides that the Commission shall grant any application provided for in Section 308 if, upon examination, it shall make a finding that the public interest would be served by a grant. This provision is substantially the same as that in the present Act, except that the new provision would apply to construction permits as well as licenses. However, this provision must be read in conjunction with the proposed subsection (c) of Section 309. This provides that all authorizations granted without a hearing shall remain subject to protest by any interested party for a thirty day period. The protest must show that the protestant is a party in interest and must specify with particularity the facts relied on, and within fifteen days from the date of filing of any protest the Commission must make findings as to whether the protest meets these requirements of the section. If the Commission so finds, the application must be set for hearing on the issues specified in the protest, as well as such other issues as the Commission may prescribe. The protestant shall have both the burden of proceeding and the burden of proof with respect to issues set forth in the protest and not specifically adopted by the Commission. The Commission is directed to expedite protest hearing cases and the effective date of the Commission's action shall be postponed until the Commission's decision after hearing, unless the particular authorization is necessary to maintain an existing service.

Subsection (b) of the proposal provides that if the Commission is unable to find that a grant of the application would be in the public interest, it must, before designating a hearing, advise the applicant and all other known parties in interest of the nature and source of all objections, and give the applicant opportunity to reply. If the Commission is still unable to make the finding necessary for a grant, it shall designate the application for hearing and notify all parties in interest of the matter in issue. Prior to ten days before the date of hearing parties in interest who have not been notified by the Commission may petition to intervene. The applicant would have the burden of proceeding with the evidence and the burden of proof.

Subsection (b) of the present section, with respect to the form of, and conditions attached to, licenses, is retained as subsection (d).

It should be noted that Section 12 of the bill (which otherwise contains only editorial changes in Section 319 of the Act, and is not separately discussed) would amend Section 319 of the Act to provide that applications for licenses shall not be subject to the provisions of the proposed subsections (a), (b), (c) of Section 309. This amendment is a consequence of the changes proposed in Section 309, since the provisions of that section will apply to applications for construction permits and it would obviously be unnecessary for them to apply also to applications for licenses in 319 situations.

The Commission has previously raised strong objections to the proposals contained in this section. It seems clear that they are in striking contrast to other provisions in this bill which are designed to accelerate Commission action in handling applications. In no case could the Commission designate an application for hearing before giving all parties in interest written notification and the applicant an opportunity to argue why no hearing should be held. This would require both the staff and the Commission to consider any application twice before designating it for hearing. Moreover, the section would apparently require this procedure even in those cases where a hearing would be required by the protest rule or by virtue of the fact that there was pending an application that was clearly mutually exclusive.

The Commission has also pointed out previously that the protest rule, in addition to being undesirable, is also unnecessary. In view of the Supreme Court decision in Federal Communications Commission v. National Broadcasting Company (KOA), 319 U.S. 239, legislation is clearly not necessary to assure a hearing to stations who would receive interference from a proposed station within their protected contours. It appears therefore that the sole effect of the proposal would be to permit existing stations to delay or prevent a station which would be an economic competitor from securing a construction permit or license. At least for the period of time that an application would be delayed, this provision would serve to extend the license of an existing station into a monopoly and would be at variance with the basic philosophy of the Act that the public interest in broadcasting would be served by competition. It is also significant that the language of the amendment does not restrict these provisions to broadcast stations and they would therefore be applicable to proceedings in all the radio services, and would therefore permit taxicab companies and industrial users of radio to delay applications of competitors.

It should also be pointed out that the Senate Committee Report on S. 658 clearly indicated that economic injury within the meaning of the Sanders case would make a person a "party in interest." The House Report does not mention the meaning of the phrase "party in interest." It appears that a party who could appeal under the Sanders case because of economic injury could also protest. However, it does not appear that the section as proposed would do more than confer standing to raise issues other than economic injury, or overrule the Sanders rule that economic injury is not of itself a factor determinative of the public interest.

The protest provisions raise the further question of whether issues raised by a protest under the proposed provisions could be disposed of by the Commission on the written pleadings or would have to be made the subject of an adversary hearing. The proposed protest provisions state that if the Commission finds that a protest meets the stated requirements (that it contain allegations of fact showing the protestant to be a party in interest, and specifying with particularity the facts, matters and things relied upon), the application involved

"shall be set for hearing upon the issues set forth in said protest" together with such issues as the Commission may add. While this language appears to be capable of an interpretation requiring a hearing upon any issues specified by the protestant, that result would be undesirable, particularly where the Commission could find, without a fact-finding hearing, as a matter of law that a particular issue has no relationship to operation in the public interest. It is believed that under present law such issues of law may be disposed of on the written pleadings and without an oral, fact-finding hearing. See Federal Communications Commission v. WJR, The Goodwill Station, Inc., 337 U.S. 265. The proposed language might, however, be construed to deny authority to the Commission to decide on the relevance of issues proposed by a protestant in advance of a hearing.

Section 9. This section amends the provisions of Section 310(b) of the Act relating to transfers. The existing provision prohibiting the transfer of a license without a finding by the Commission that the transfer would be in the public interest is expanded to include construction permits. The existing provision in Section 319(b) of the Act, which provides that construction permits shall not be transferred without the approval of the Commission, would be eliminated by Section 12 of this bill as being no longer necessary in view of the amendment to Section 310(b).

Section 310(b) is further amended by the addition of a provision that an application for transfer shall be disposed of as if the transferee were making application under Section 308 for a permit or license, and that in acting on any such application the Commission may not consider whether the public interest would be served by a transfer to a person other than the proposed transferee. In explaining this provision, the Committee report states: "In other words, in applying the test of public interest, convenience, and necessity the Commission must do so as though the proposed transferee or assignee were applying for the construction permit or station license and as though no other person were interested in securing such permit or license."

It would appear from the language of the proposed amendment and the report, that this amendment would restrict the Commission, in transfer cases, to determining whether the transferee is qualified to hold a license or construction permit, and could be interpreted to preclude any inquiry by the Commission into the public interest considerations involved in the transfer itself. The original Senate bill provided that in transfer cases the Commission would be limited to determining whether "the proposed transferee or assignee possesses the qualifications required of an original permittee or licensee." In commenting on the Senate bill, the Commission raised strong objection to this provision on the grounds that it would open the door to trafficking in licenses and would also seriously undermine the Commission's power to enforce the Act and its Rules, since, presumably, a licensee, even though he had violated the Act or the Rules and might be in danger of losing his license, could always transfer the license so long as the proposed transferee met the minimum qualifications for a licensee.

The changed wording in the House version raises a question as to whether the Commission would merely be prevented from considering whether the transfer should be made to someone other than the proposed transferee (as was formerly done under the Avco procedure where an opportunity was given for others to request the facilities), or whether it is intended in addition that the Commission may not question the desirability of the transfer per se. The change in wording made by the House Committee leaves room for argument in support of either interpretation. The language of the House Report sheds no light on this matter.

The interpretation is as provided in the report. The specific public interest finding requirement in the section.

Section 10. This section of the bill constitutes a substantial revision of the provisions of Section 312(a) of the Communications Act which presently provides only for revocation of station licenses. The bill as passed by the Senate limited to some extent the circumstances in which licenses could be immediately revoked, but also added a provision providing for the issuance of cease and desist orders and for revocation of licenses where the licensee has failed to comply with a cease and desist order. The House bill, however, goes beyond this, in general conformity with suggestions made by the Commission, to authorize the Commission in certain cases to suspend licenses, and also to provide for a system of forfeitures in lieu of suspension, revocation, or the issuance of a cease and desist order, or in addition to the issuance of a cease and desist order.

Specifically, Section (a) of the proposed revision would authorize the Commission to revoke licenses or permits or to suspend licenses for a period of not more than 90 days, in five types of situations. The second, authorizing such suspensions or revocations "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application", is identical with the grounds now provided in Section 312 of the Act for revocation. However, under the bill as proposed, authorizations could be revoked or suspended for false statements made to the Commission only where they were "knowingly made", and authorizations could be revoked or suspended for failure to operate substantially as set forth in the license or for failure to observe any provision of the Act, or rule or regulation of the Commission, only where such failures are either "willful" or "repeated". These limitations on the existing authority to revoke were proposed by the Commission itself, since it is clear that the Commission never has and never would revoke any license for false statements unless they were "knowingly made," or unless the failure to operate in accordance with the license, or in accordance with the Commission's rules and regulations, was "willful" or "repeated." However, the addition of this specific limiting language was believed to be useful in order to allay the unfounded suspicion that the Commission might conceivably abuse its powers. In addition to these grounds for revocation or suspension of authorizations, the new provision would authorize the Commission to take such action for violation of, or failure to observe, any cease and desist order issued by the Commission, a provision identical with one taken from the Senate version of the bill.

One ground for revocation or suspension suggested by the Commission in its proposed redraft of the bill has been eliminated. This ground would have authorized revocation or suspension where a licensee or permittee engages in a course of conduct designed to coerce other licensees or permittees to violate the Act or the Commission's regulations, or engages in any course of conduct which would have warranted the Commission in refusing an authorization to

such other licensee or permittee. This provision had been suggested by the Commission to take care of the type of situation involved in the Don Lee case where the network itself, because of the manner in which the network regulations are necessarily written, had not violated the Commission's chain broadcasting regulations, but had, on the contrary, coerced its affiliates into violation of the regulations. Deletion of this provision will mean that networks which induce other licensees to violate the Commission's chain broadcasting regulations will, in the absence of modification of the Commission's chain broadcasting regulations, be subject to Commission sanctions only to the extent that the network is itself the licensee of one or more stations, and its course of conduct is such that the Commission determines, upon renewal or upon its application for further authorizations, that, because of such conduct, it is not qualified to be a licensee. The licenses of network-owned stations could apparently never be revoked or suspended for such acts nor could fines be imposed upon the network pursuant to the provisions of the section discussed below. On the other hand, to the extent that the network could be said to have conspired to induce a violation of the Commission's rules and regulations, it might be possible to proceed against the network in a criminal proceeding pursuant to the provisions of Sections 501 or 502 of the Communications Act.

A proposed new Section 312(b) contained in Section 10 also provides that where any person has failed to operate substantially as set forth in a license or failed to observe any provisions of the Act or any rule or regulation of the Commission, the Commission may order such person to cease and desist from such action, even where such failure was not willful or repeated. And, as indicated above, subsequent violation of such a cease and desist order could itself be a ground for revocation or suspension of a license.

A proposed new Section 312(c) would establish a new procedure to be followed by the Commission before revoking or suspending a license, or issuing a cease and desist order. As the Commission is aware, under the procedures presently prescribed by Section 312(a) of the Act for revocation cases, the Commission revokes a license subject to suspension of the revocation order upon a written request by the licensee for a hearing. This has led to confusion on the part of the public since Commission orders have been described in the press as finally revoking the license authority, whereas such orders have in reality merely constituted the initiation of revocation proceedings. The new procedure, which is substantially identical with that contained in the Senate bill and was approved by the Commission in its comments, provides that before revoking a license the Commission shall first issue a show cause order affording the licensee or permittee opportunity to show by evidence in a hearing why it believes that the revocation, suspension, or cease and desist order should not be issued. No final order of revocation or suspension, or a cease and desist order, can be issued until after a hearing

or the waiver thereof, - such hearing to be a full adjudicatory proceeding following the procedures set forth elsewhere in the bill.

Section 10 also contains authority, along the lines recommended by the Commission, for the Commission to direct persons to pay a forfeiture of up to \$500 for each day of offense in any case where it is authorized to revoke or suspend a license or permit, to issue a cease and desist order, or suspend a radio operator's license. Under the provisions of the House bill, the Commission may immediately direct the licensee or permittee to pay a forfeiture, or may do so after a revocation, suspension or cease and desist hearing, in lieu of issuing any such order, or in addition to issuing a cease and desist order. Where the Commission chooses to impose a fine without initiating any revocation, suspension or cease and desist order proceeding, it is required to inform the party of his apparent liability for the forfeiture of a specific sum of money and afford him an opportunity either to secure a hearing or to submit a written request for remission or reduction of the amount of forfeiture which has been imposed. Upon final determination of forfeiture, the party involved must be given at least 30 days in which to pay the sum to the Treasury of the United States, and if the sum is not paid within the period specified, suit may be brought by the Department of Justice to recover the forfeiture in accordance with the provisions of Section 504 of the Act.

Finally, the House proposal contains two provisions not contained in the Commission's draft proposal. In the first place the burden of proceeding with the introduction of evidence and the burden of proof is expressly placed upon the Commission in all cases coming within the section. In addition, the provision of Section 9(b) of the Administrative Procedure Act providing that, except in cases of willfulness or where public health, interest, or safety otherwise require, prior to institution of agency action "facts or conduct which might warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements" is expressly made applicable to Commission proceedings looking toward the issuance of a cease and desist order or the imposition of a forfeiture. The language of Section 9(b) of the Administrative Procedure Act is now applicable only in suspension or revocation cases. These provisions raise the same questions as do Section 9(b) of the Administrative Procedure Act as to the necessity for affording an "opportunity to demonstrate or achieve compliance with all lawful requirements" with respect to non-recurring or non-continuing acts which by their nature cannot be rectified or corrected once committed. Furthermore, this problem is complicated by the fact that since cease and desist orders may be issued for acts which are not willful or repeated, this provision would in many cases require special notice and an opportunity to achieve or demonstrate compliance with lawful requirements before

the Commission could institute proceedings looking toward issuance of a cease and desist order, and to that extent would weaken the effectiveness of the cease and desist procedure, itself intended for use in cases of non-willful action.

Section 11. This provision of the bill is identical to a provision of the Senate version and would add a new Section 316 to the Act relating to modification of construction permits and licenses. Section 312(b) of the present Act provides for modifications, but in view of the fact that under this bill Section 312 relates to sanctions, the authority to modify is omitted from Section 312 and is dealt with in a new section.

This section retains the present provision of Section 312(b) authorizing the Commission to modify licenses and construction permits if it finds the public interest will be promoted, or if the Act or any treaty will thereby be more fully complied with. However, the present Act provides that before an order of modification becomes final a licensee or permittee must be notified in writing of the reasons for the modification and be given a reasonable opportunity to show cause why an order of modification should not issue, while the House bill would require that the licensee or permittee be given at least 30 days to show cause, at a public hearing, if requested, why such an order should not issue. There is also a provision that in any hearing conducted pursuant to this section, the Commission shall have the burden of proceeding with the evidence and the burden of proof. The Commission has previously approved these provisions and they were incorporated in the Commission's redraft of the McFarland bill.

It should be noted, however, that the previous comments of the Commission were submitted before the EARC agreement was concluded in Geneva, 1951. In carrying out its obligations under the agreement, it will be necessary for the Commission to modify the licenses of a great number of stations in order to bring the Atlantic City Table of Frequency Allocations into effect. In many instances there will be a critical time element involved in the implementation program, and the added procedural requirement proposed in this section may hamper the Commission in carrying out the necessary modifications of licenses.

Section 12. This section is discussed with Section 8.

Section 13. This section amends Section 402(a) to conform to Public Law 901, 81st Cong., providing for suits to secure review of final Commission orders, other than those referred to in Section 402(b), in the courts of appeals. Public Law 901 refers, however, to "final" orders and the new section does not. The present Section 402(a) does not contain the word "final" either, so the new section will probably be limited to the final orders mentioned in Public Law 901, as is the present 402(a) by judicial construction. The present Section 402(a) refers to enforcement of orders, but Public Law 901 does not nor does the new proposed Section 402(a). The Senate version of 402(a) and the Commission's revision contained the word "enforce." This is eliminated. Enforcement of Commission orders will therefore be handled in the district courts as provided in Section 401 of the Act.

Section 13 also amends Section 402(b), not only to revise its language in accordance with the new definitions, but also to provide specifically for appeals (1) by parties to applications for transfers which are denied, (2) applicants for permits under Section 325 or permittees under that section whose permits are revoked, (3) holders of construction permits or licenses whose permits or licenses are modified, suspended or revoked, (4) any other person who is aggrieved or whose interests are adversely affected by an order granting or denying one of the applications above-mentioned, (5) any person upon whom a cease and desist order is served (under Section 312 as revised) or (6) any operator whose license is suspended. These provisions are substantially the same as those in the Senate version of 402(b) and the Commission's revision, except that the Senate version also provided for appeals by parties aggrieved by the declaratory order provided for in the proposed revision of Section 401 contained in the Senate version but eliminated in the House version, as recommended by the Commission.

Section 13 also provides for the appeal procedure under Section 402(b) which was in the Commission's proposed revision of the Senate version and in the Senate version, except that both the Senate and the new House committee proposals provide that upon a remand the Commission shall decide upon the basis of the old record unless otherwise ordered by the court, and that the new bill provides for Supreme Court review only by way of certiorari, while the Commission and Senate versions provided for direct appeal to the Supreme Court from the Court of Appeals in revocation proceedings or upon failure to renew a license. The remand provision overrules the Pottsville case and may make necessary frequent requests to the court to permit opening the record where parties change, the evidence has become stale, etc. The Commission previously objected to this provision. Requiring certiorari for Supreme Court review seems desirable since few Commission cases under 402(b) involve broad principles of federal law of wide effect. The change from direct appeal specified in the Senate bill to the certiorari procedure now in force, was strongly urged by spokesmen for the United States Supreme Court.

Section 14. This section relates to Section 405 of the Act concerning rehearings. The present section of the Act permits petitions to be filed for rehearing within 20 days after a decision is effective in cases arising under Title III, and at any time in other cases. Moreover, under the present section, a petition for rehearing may be filed in any case only by a party thereto, except that in Title III cases any person aggrieved or whose interests are adversely affected may

file such a petition. The proposed amendment would permit a petition for rehearing to be filed in all cases within 30 days of the date on which public notice is given of the decision, and by any party to the proceeding, or by any other person aggrieved or whose interests would be adversely affected.

The proposed amendment also provides that a petition for rehearing is not a prerequisite to seeking judicial review, except where the party seeking review was not a party to the proceedings or relies on questions of fact or law upon which the Commission has not been afforded an opportunity to pass. The amendment also would add a provision specifying that the time for filing an appeal under Section 402 shall be computed from the date upon which public notice is given of orders disposing of all petitions for rehearing filed in any case.

The House amendment eliminates the provisions in the Senate bill, to which the Commission objected, which would have restricted the Commission to considering only newly discovered evidence upon rehearing and would have made petitions for rehearing serve as an automatic stay of the effective date of any Commission order. The amendment contained in the House bill was in the Commission's redraft,

Section 15. This section is discussed with Section 5.

Section 16. This section amends Section 410(a) of the Act, concerning the use of joint boards, to make such use subject to the provisions of Section 409(a) which, if amended as proposed, will provide that in certain cases a hearing may be held only by the entire Commission or by an examiner. It deletes the language in the present Section 410(a) to the effect that a joint board shall have the same powers as a member of the Commission when designated to hold a hearing, since it is proposed to eliminate from 409(a) the present language with respect to designation of individual Commissioners.

Section 17. This section, the last, provides that the act shall take effect on the first day of the first month which begins more than sixty days after the date of enactment, except that requirements imposed by procedural changes shall not be mandatory as to any agency proceeding (as defined in the Administrative Procedure Act) initiated prior to the effective day and that the amendments to the review provisions shall not apply to pending court actions. The act does not spell out what are procedural changes, and while some matters, such as the provision with respect to consultation by examiners with other persons, are clearly procedural, there may be some doubt about others, such as the transfer provisions. It is also not entirely clear when a proceeding is "initiated" under this section. For example, there might be some doubt whether a rule making proceeding was initiated by a notice of proposed rule making issued by the Commission, or by the institution of an investigation or the receipt of a petition requesting rule making where either of these led to rule making. Similarly, a question could be raised, in the absence of more specific language, as to whether licensing proceedings are initiated by the acceptance of an application for filing, or only when processing on such application actually starts or, even, only when the Commission actually takes some action on the application. Since, if the bill passes at any time within the next few months, there will be many applications on file, but not yet reached for processing, and they should be treated the same as others at a more advanced stage (especially since they may be found to conflict with such more advanced applications), it would appear that administratively the first of these possibilities is clearly preferable. Nothing in the bill or the House Report prejudices such an interpretation of the present language, but its vagueness might lead to dispute.

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.
May 1, 1952

Honorable Sam Rayburn
Speaker of the House of Representatives
Washington 25, D. C.

Dear Mr. Speaker:

The purpose of this letter is to point out to the Congress, as is more fully detailed in the attached memorandum, the Commission's firm belief that the enactment, in its present form, of S. 658, a bill to amend the Communications Act of 1934, now pending before the House, would have, as a principal detrimental consequence, the disruption of the Commission's functions. It would cause serious delays in the processing of applications for radio and television station licenses at a time when we are about to undertake the processing of hundreds of applications for new television stations.

These consequences, we believe will flow chiefly from the provisions of the proposed Section 5(c) contained in Section 5 of the bill, the proposed Section 409(c)(2) in Section 15 of the bill, and the proposed revision of Section 309 contained in Section 8 of the bill. The Commission's position with respect to other provisions of this bill are of record.

The first two of these sections would deprive the Commission of the benefits of consultation with any members of its staff in adjudicatory proceedings which have been designated for hearing, with the exception of a single professional assistant provided for in a proposed new Section 4(f)(2) of the Act. These provisions, depriving the Commissioners of the staff assistance vital to their decision of the complex cases with which they must deal, can only result in the serious disruption of the Commission processes and in substantial and unnecessary delays in deciding hearing cases.

The other section would make extensive changes in the provisions of Section 309 of the Communications Act relating to the processing of radio and television applications. It would require double processing and Commission consideration of all applications which must be designated for hearing and, as a result of the new "protest procedure" require a large number of unnecessary additional hearings. It would, consequently, impose upon the Commission an unnecessary additional procedural workload which is certain to delay all grants of radio and television applications, increase substantially the Commission's budgetary requirements, and add to the already substantial cost of securing a radio or television license.

Because of absence, Commissioner Jones did not participate in the formulation of these views.

By Direction of the Commission

Paul A. Walker
Chairman

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The first two of these sections would deprive the Commission of the benefits of consultation with any members of its staff in adjudicatory proceedings which have been designated for hearing, with the exception of a single professional assistant provided for in a proposed new Section 4(f)(2) of the Act. These provisions, depriving the Commissioners of the staff assistance vital to their decision of the complex cases with which they must deal, canonly result in the serious disruption of the Commission processes and in substantial and unnecessary delays in deciding hearing cases.

The other section would make extensive changes in the provisions of Section 309 of the Communications Act relating to the processing of radio and television applications. It would require double processing and Commission consideration of all applications which must be designated for hearing and, as a result of the new "protest procedure", require a large number of unnecessary additional hearings. It would, consequently, impose upon the Commission an unnecessary additional procedural workload which is certain to delay all grants of radio and television applications, increase substantially the Commission's budgetary requirements, and add to the already substantial cost of securing a radio or television license.

Because of absence, Commissioner Jones did not participate in the formulation of these views.

By Direction of the Commission

Paul A. Walker
Chairman

October 27, 1951.

Honorable Robert Crosser
Chairman, Committee on Interstate
and Foreign Commerce
House of Representatives
Washington, D. C.

Dear Congressman Crosser:

The Federal Communications Commission wishes to take this opportunity to request the consideration by your Committee of a change in the Commission's proposed substitute for Section 11 of S. 658, a bill to amend the Communications Act of 1934.

S. 658 was passed by the Senate on February 5, 1951, and is presently before the House Committee on Interstate and Foreign Commerce. The Commission has previously submitted a proposed revision of S. 658. Section 9 of the Commission's proposed revision, a copy of which is enclosed herewith as Appendix A, is a substitute for Section 11 of the bill passed by the Senate, and contains an additional provision providing for the imposition of reasonable forfeitures by the Commission for the violation of the Communications Act or the Commission's rules. This provision, which would be a new Section 312(d) of the Communications Act, has been reconsidered by the Commission. It is believed desirable to replace it with a revised Section 312(d), a copy of which is enclosed herewith as Appendix B.

The Commission has previously stated its agreement with the purpose of S. 658 to provide additional sanctions less stringent in nature than the revocation of a license, and its belief that cease and desist orders alone will not adequately meet the problem. Its proposal for the power to impose reasonable forfeitures for violation of the Communications Act or the Commission's rules was based upon this belief.

In many instances, present enforcement procedures are unduly cumbersome and severe. In the safety and special radio services field, for example, most violations are individually of a comparatively minor nature, such as failure to comply with the rules requiring transmitter measurements to be made at regular intervals or failure to attach identification cards to transmitters. However, although such violations may not warrant revocation of a license or the institution of criminal proceedings, they constitute a major impediment to effective implementation of the Act. Reported violations in this field alone are estimated for the fiscal year 1950 at approximately 20,600. Violations by stations aboard small boats, particularly fishing vessels operating in remote areas, are very numerous and troublesome. A special enforcement campaign conducted during March 1950 showed that of 161 ship telephone stations inspected, 120 were not in compliance with one or more of the Commission's Rules Governing Ship Service. The other services present a similar picture of the need for an expeditious enforcement method less severe than revocation and administratively less cumbersome than the cease and desist order procedure.

The Commission's present proposal makes clear that a proceeding looking toward the imposition of a forfeiture may be instituted as an independent alternative to the issuance of an order to show cause looking toward revocation or suspension of a license, or the issuance of a cease and desist order. It also provides for the imposition of a forfeiture as an alternative remedy after hearing on an order to show cause and a determination that imposition of a forfeiture provides an adequate remedy in lieu of a final order of revocation or suspension or issuance of a cease and desist order, or should be imposed in addition to a cease and desist order. The provision safeguards the right to a hearing before the Commission in either type of proceeding. The Commission believes that its present proposal is simpler of administration than its previous proposal, that it more clearly provides for independent forfeiture proceedings, and that it is better adapted to correction of the numerous but predominantly minor violations with which it is concerned.

The Commission therefore respectfully urges that consideration be given to this proposal in lieu of its previous proposed revision of Section 11 of S. 658.

By Direction of the Commission

Wayne Coy
Chairman

Appendix A

Sec. 9. Section 312 of such Act, as amended, is amended to read as follows:

"ADMINISTRATIVE SANCTIONS

"Sec. 312. (a) Any station license may be revoked or suspended for a period not to exceed ninety days, and any construction permit may be revoked -

"(1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308;

"(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application;

"(3) for willful or repeated failure to operate substantially as set forth in the license;

"(4) for willful or repeated violation of, or willful or repeated failure to observe, any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States;

"(5) because the licensee or permittee (or any person controlling, controlled by, or under common control with, such licensee or permittee) has engaged in a course of conduct designed to persuade, induce, or coerce any other licensee or permittee (A) to violate or fail to observe any of the provisions of this Act or any rule or regulation of the Commission, or (B) to engage in any course of conduct which, under any rule or regulation of the Commission, would warrant the Commission in refusing to grant a license or permit to such other licensee or permittee;

"(6) for violation of or failure to observe any cease and desist order issued by the Commission under the section.

"(b) Where any person (1) has failed to operate substantially as set forth in a license, or (2) has violated or has failed to observe any of the provisions of this Act, or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States, the Commission may order such person to cease and desist from such action.

"(c) Before revoking or suspending a license or revoking a permit pursuant to subsection (a), or issuing a cease and desist order pursuant to subsection (b), the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation or suspension or a cease and desist order should not be issued.

Any such order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon said licensee, permittee, or person to appear before the Commission at a time and place stated in the order, but in no event less than thirty days after the receipt of such order, and give evidence upon the matter specified therein; except that where safety of life or property is involved, the Commission may provide in the order for a shorter period. If after hearing, or a waiver thereof, the Commission determines that an order of revocation or suspension or a cease and desist order should issue, it shall issue such order, which shall include a statement of the findings of the Commission and the grounds and reasons therefor and specify the effective date of the order, and shall cause the same to be served on said licensee, permittee, or person.

"(d) In any case where the Commission is authorized pursuant to this section to suspend or revoke a license, or to revoke a permit, or to issue a cease and desist order, the Commission, after the hearing required by subsection (c), or waiver thereof, in lieu of revoking or suspending a license, or revoking a permit, or issuing a cease and desist order, or in addition to issuing a cease and desist order, may order the licensee or permittee to forfeit to the United States the sum of \$500 for each day during which the Commission finds that any offense set forth in the order to show cause issued pursuant to subsection (c) occurred, or such lesser sum as the Commission may find appropriate in the light of all the facts and circumstances of the particular case. Any forfeiture ordered by the Commission under this subsection shall be paid by such permittee or licensee to the Treasury of the United States within thirty days after the public notice of the order of the Commission unless the Commission shall, upon application, extend the time for payment, and, if not so paid, the license or permit shall be deemed revoked and shall be surrendered forthwith unless within such time the licensee shall file a suit in accordance with the provisions of section 402 (a) hereof to enjoin or set aside the order of the Commission. If the order is sustained, the forfeiture, together with interest thereon, shall be paid into the Treasury of the United States within thirty days after public notice of the order of the court unless the Commission shall, upon application, extend the time for payment, and, if not so paid, the license or permit shall be deemed revoked, and shall be surrendered forthwith.

"(e) Any station license granted under the provisions of this Act, or the construction permit required hereby, may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with: Provided, however, That no such order of modification shall become final until the holder of such outstanding license or permit shall have been notified in writing of the proposed action and the grounds or reasons therefor and shall have been given reasonable opportunity, in no event less than thirty days, to show cause by public hearing, if requested, why such order of modification should not issue. Provided, That where safety of life or property is involved, the Commission may, by order, provide for a shorter period of notice."

"(f) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and burden of proof shall be upon the Commission."

APPENDIX B

- (d) Except in so far as other provisions of this Act provide for specific forfeitures, in any case where subsection (a) or (b) of this section provides for the revocation or suspension of a license, the revocation of a construction permit, or the issuance of a cease and desist order, and in any case where section 303(m) of this Act provides for the suspension of an operator's license, the Commission may direct the payment of a forfeiture to the United States of the sum of \$500 for each day during which any offense specified in subsection (a) or (b) of this section, or in section 303(m), occurred, or such lesser sum as the Commission may find appropriate in the light of all of the facts and circumstances of the particular case. Before the imposition of any forfeiture herein provided for, the Commission shall serve a notice of apparent liability for the forfeiture of a specific sum of money, which sum may be determined by the Commission on the basis of information then before it. Such notice shall give a reasonable opportunity to apply for a hearing, or, if a hearing is waived, to submit a written request for remission, or reduction in the amount of the forfeiture, such written request to be supported by a statement of the facts warranting remission or reduction. The Commission, upon final determination of the amount of any forfeiture, shall give notice thereof and specify the time, not less than 30 days after receipt of notice, within which to pay such sum into the Treasury of the United States. If not paid within the period specified, suit may be brought as provided in section 504 of this Act for recovery of a forfeiture. In any case where the Commission has served an order to show cause pursuant to subsection (c) of this section, the Commission, after hearing or waiver thereof as therein provided, may, in lieu of revoking or suspending a license, or revoking a permit, or issuing a cease and desist order, or in addition to issuing a cease and desist order in such proceeding, impose the forfeiture provided for in this subsection. If a hearing is waived, a reasonable opportunity shall be given to submit a written request for remission, or reduction in the amount of the forfeiture, supported by a statement of the facts warranting remission or reduction. Any forfeiture ordered after the service of an order to show cause shall be collected as provided above.

TO: Commissioner Bartley

FROM: Phil

SUBJECT: Amendment of Section 310 (b) of the Act
to include transfers of construction permits.

1. The McFarland amendments of 1952 (S-658) modified Section 310 (b), which was applicable only to transfers of station licenses, to apply also to transfers of construction permits.

Existing provision:

Sec. 310 (b)

The station license required hereby, the frequencies authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer of control of any corporation holding such license, to any person, unless the Commission shall, after securing full information, decide that said transfer is in the public interest, and shall give its consent in writing.