

AMENDING SECTION 501 OF THE COMMUNICATIONS ACT OF 1934, RELATING TO OFFENSES PUNISHABLE THEREUNDER

JULY 8 (legislative day, JULY 6), 1953.—Ordered to be printed

MR. TOBEY, from the Committee on Interstate and Foreign Commerce,
submitted the following

REPORT

[To accompany H. R. 4559]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 4559) to amend section 501 of the Communications Act of 1934, so that any offense punishable thereunder, except a second or subsequent offense, shall constitute a misdemeanor rather than a felony, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of this legislation is to reduce the criminal penalties contained in section 501 of the Communications Act of 1934, as amended, which is the general penalty provision of the act, so that a first offense punishable under that section will constitute a misdemeanor rather than a felony. A violation committed by a person who had already been convicted of an offense punishable under the section would remain a felony.

Section 501 at present provides that a violation of any provision of the Communications Act shall be punishable by a fine of not more than \$10,000 or by imprisonment of a term of not more than 2 years. Under section 1 of the Criminal Code (title 18 of the United States Code) such offense is classified as a felony since it is punishable by imprisonment for a term exceeding 1 year.

Among the violations to which section 501 applies are violations of section 301 of the Communications Act which prohibits the operation of a radio transmitter without a license from the Federal Communications Commission, and violations of section 318, which requires any person who is actually engaged in the operation of any transmitting apparatus to secure an operator's license. Violations of these provisions by persons interested in the art of radio transmission are not uncommon. Since in many instances such persons do not have any previous criminal records, United States attorneys and Federal grand juries are reluctant to prosecute such persons for a felonious offense. As a result, violations of sections 301 and 318 are frequently not prosecuted at all and violators go unpunished.

Since 1940, the Commission has referred to the Department of Justice for criminal prosecution under section 501 some 16 cases. In 7 of these 16 cases, convictions were obtained and fines imposed. In 5 of these cases, however, the Department declined prosecution and in 4 of the cases which were presented to grand juries, the juries refused to indict.

The policing of the ether is an important responsibility which is being discharged by the Federal Communications Commission. It appears that the penalties provided for in section 501 of the Federal Communications Act, because of their severity, hinder rather than assist the Commission in the enforcement of the provisions of the Federal Communications Act. The committee, therefore, feel that revision of section 501, as recommended by the Commission, so as to make a first violation a misdemeanor rather than a felony, is a desirable amendment which will promote better law enforcement.

The following letter of the Federal Communications Commission, dated June 3, 1953, addressed to the Vice President, United States Senate, recommending enactment of this legislation, was referred to this committee:

FEDERAL COMMUNICATIONS COMMISSION,
Washington 25, D. C., March 25, 1953.

The VICE PRESIDENT,
United States Senate, Washington 25, D. C.

DEAR MR. VICE PRESIDENT: The Commission wishes to recommend for consideration of the Senate enactment of legislation amending section 501 of the Communications Act of 1934, as amended, to change the criminal sanctions contained therein so that violations of the Communications Act will constitute, except in case of a subsequent violation of the same section of the act, a misdemeanor rather than a felony.

Section 501 of the act reads as follows:

"Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished for such offense, for which no penalty (other than a forfeiture) is provided herein, by a fine of not more than \$10,000 or by imprisonment for a term of not more than two years, or both."

It is proposed to amend this section to read as follows:

"Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this Act prohibited or declared to be unlawful, or willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished for such offense, for which no penalty (other than a forfeiture) is provided herein, by a fine of not more than \$10,000 or by imprisonment for a term *not exceeding one year, or both. But any person, having been once convicted of violation of any provision of the Act punishable under this section, who is subsequently convicted of again violating any provision of the Act punishable under this section, shall be punished by a fine of not more than \$10,000 or by imprisonment for a term of not more than two years, or both.*"

Section 1 of the Criminal Code defines as a felony "any offense punishable by death or imprisonment for a term exceeding 1 year" and, thus any violation of the Communications Act constitutes a felony under the present wording of section 501 of the act. Under rule 7 of the Federal Rules of Criminal Procedure, felonies must be prosecuted by indictment, while misdemeanors may be prosecuted by information.

Experience in recent years has shown that the enforcement of section 501 of the act has been made unnecessarily difficult because of the reluctance, except in the most aggravated cases, of juries to indict and convict as a felon persons without a previous record of conviction who have violated the act. Thus, many clear violations of the act, including a substantial number of cases which the Commission has referred to the Department of Justice for criminal prosecution, have remained unpunished because the only criminal penalty provided for in the present section 501 has been considered as too severe for the offense committed

and juries have been unwilling to indict or convict. There have been a substantial number of instances of violations of the Communications Act which have come to the attention of the Commission which we believed were of a type which would have merited criminal prosecution but were not of such gravity as to justify categorizing as a felony. And with respect to the cases which have been referred for prosecution, in all too many cases we have found that there has been an unwillingness on the part of juries to agree to indict or to convict upon trial because of a belief on their part that the sanction was too severe. We have concluded therefore that, in view of the importance of policing the radio spectrum to insure that vital services may operate free of impairment, all first offenses should be punishable as misdemeanors. It is more important that the criminal sanction available to the Commission be of a nature as will permit actual application than to insist that, because of the serious nature of the more aggravated cases, the penalties shall be of a severity as to constitute a felony.

In this respect it should be noted that, although section 502 of the Communications Act makes it a crime, punishable as a misdemeanor, to willfully and knowingly violate any rule or regulation of the Commission, the Commission does not, in many cases, have an alternative of proceeding with a felony prosecution under section 501 for violation of the act, or with a misdemeanor prosecution under section 502 for violation of the Commission's rules. For a large percentage of the cases which the Commission believes should be referred for criminal prosecution involve unauthorized operations in violation of either section 301 or section 318 of the Communications Act, which do not also involve any violation of the Commission's rules and regulations.

The Commission has considered, in drafting this proposed legislation, the advisability of recommending legislation, similar to that under which certain other agencies of the Government are operating, which would make violations of particular provisions of the Communications Act a felony or a misdemeanor depending upon the type of offense committed. The Commission has determined, however, that in view of the large variety of offenses which are involved and in view of the fact that the gravity of many particular offenses necessarily depends upon the circumstances surrounding their commission, no such categorization is practicable. Instead, the Commission is proposing that all first violations of the act should be made misdemeanors, but that any person who has once been convicted of violating any section of the act and again violates the act, the subsequent offense shall be prosecuted as a felony. In this respect the present proposal follows a pattern established in the Food and Drug Act (21 U. S. C., § 333). It is believed that juries will be less reluctant to indict as felons, offenses by persons who have been previously convicted of violating the act.

The Commission is convinced that the suggested revision of section 501 of the Communications Act will provide a criminal sanction of sufficient severity to serve as a substantial deterrent upon prospective violators of the act. For not only would second offenders be chargeable with felonies, but, if previous experience can be relied on, in many cases there will be several counts in the criminal charge, each punishable by a fine of up to \$10,000 and/or imprisonment for up to a year. And, in addition, the higher percentage of successful prosecutions which can be expected to result from adoption of the proposed revision, should add to the effectiveness of criminal sanctions in the all-important task of insuring the fullest possible measure of enforcement of the provisions of the Communications Act.

The consideration of these recommendations by the Senate will be greatly appreciated. The Commission will be most happy to furnish any additional information that may be desired by the House or by any committee to which this material is referred. The Bureau of the Budget has advised the Commission that it has no objection to the submission of this letter.

By direction of the Commission.

PAUL A. WALKER, *Chairman.*

Letters from the Federal Communications Commission and the Department of Justice are set forth below.

FEDERAL COMMUNICATIONS COMMISSION,
Washington 25, D. C., June 3, 1953.

HON. CHARLES W. TOBEY,
*Chairman, Committee on Interstate and Foreign Commerce,
United States Senate,
Washington 25, D. C.*

DEAR SENATOR TOBEY: This is in reply to your letter of May 21, 1953, requesting the Commission to submit comments on H. R. 4559, a bill to amend section 501

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of the Communications Act of 1934, so that any offense punishable thereunder, except a second or subsequent offense, shall constitute a misdemeanor rather than a felony.

This proposal to amend section 501 is one of several amendments to the Communications Act which the Commission has proposed to Congress. The reasons which motivated the Commission in advancing this proposal are fully set forth in the Commission's letter of transmittal to the Vice President, copies of which are attached for your information. We strongly believe that enactment of this amendment is necessary in the interest of effective enforcement of the provisions of the Communications Act, and we hope that this bill will receive early and favorable consideration by your committee.

We will be happy to give any assistance we can to your committee concerning this legislation.

By direction of the Commission.

ROSEL H. HYDE, *Chairman.*

DEPARTMENT OF JUSTICE,
Washington, D. C., June 4, 1953.

HON. CHARLES W. TOBEY,
*Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.*

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 4559) to amend section 501 of the Communications Act of 1934, so that any offense punishable thereunder, except a second or subsequent offense, shall constitute a misdemeanor rather than a felony.

Under the present provisions of section 501 of the Communications Act, all offenses punishable thereunder are subject to a fine of not more than \$10,000 or imprisonment for a term of not more than 2 years, or both. The bill would amend section 501 so as to reduce the maximum imprisonment to 1 year for first violations and would retain the present sanctions for subsequent violations.

Whether the bill should be enacted involves a question of policy concerning which this Department prefers not to make any recommendation.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934, AS AMENDED

* * * * *

GENERAL PENALTY

SEC. 501. Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished for such offense, for which no penalty (other than a forfeiture) is provided [herein, by a fine of not more than \$10,000 or by imprisonment for a term of not more than two years, or both] *in this Act, by a fine of not more than \$10,000 or by imprisonment for a term not exceeding one year, or both, except that any person, having been once convicted of an offense punishable under this section, who is subsequently convicted of violating any provision of this Act punishable under this section, shall be punished by a fine of not more than \$10,000 or by imprisonment for a term not exceeding two years, or both.*