

HOUSE DEBATES ON BILL TO AMEND
SECTION 309 (c) H. R. 5614

July 25, 1955

Mr. DELANEY. Mr. Speaker, by direction of the Committee on Rules, I call House Resolution 300 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

RESOLVED, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 5614) to amend the Communications Act of 1934 in regard to protests of grants of instruments of authorization without hearing. After general debate, which shall be confined to the bill, and shall continue not to exceed 1 hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. DELANEY. Mr. Speaker, I yield 30 minutes to the gentleman from Illinois [Mr. Allen].

At this time I yield myself such time as I may require.

Mr. Speaker, this resolution makes in order a bill from the Committee on Interstate and Foreign Commerce, designed to correct certain abuses in hearings before the Federal Communications Commission.

As far as I know, Mr. Speaker, the bill intends to accomplish this purpose: Eliminate the necessity for holding full evidentiary hearings, with respect to facts alleged by a protestant, which, even if proven true, would not constitute grounds for setting aside a grant which the Commission has made, and by giving the Commission some discretion to keep in effect an authorization being protested when the Commission finds that the public interest requires the grants to remain in effect.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER. The question is on the resolution.

The resolution was agreed to; and a motion to reconsider was laid on the table.

Mr. PRIEST. Mr. Speaker, I move that the House resolve itself into the Committee on the Whole House on the State of the Union for the consideration of the bill (H. R. 5614) to amend the Communications Act of 1934 in regard to protests of grants of instruments of authorization without hearing.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H. R. 5614, with Mr. Kilgore in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule the gentleman from Tennessee [Mr. PRIEST] will be recognized for 30 minutes and the gentleman from New Jersey [Mr. WOLVERTON] for 30 minutes.

The gentleman from Tennessee is recognized.

Mr. PRIEST. Mr. Chairman, I yield 15 minutes to the chairman of the subcommittee, the gentleman from Arkansas [Mr. HARRIS].

Mr. HARRIS. Mr. Chairman, the Committee on Interstate and Foreign Commerce brings to the House the bill H. R. 5614, a bill which amends the Communications Act of 1934 in regard to protests of grants of instruments of authorization without a hearing.

I think most of the Members familiar with the Federal Communications Act of 1934 recognize immediately that it is highly technical. It will be remembered that this Congress in 1951 and 1952, considered a revision of the Federal Communications Act, which was generally referred to as the McFarland amendments.

One of the amendments considered at that time was the protest section, section 309 (c) of the Federal Communications Act.

The considerations which brought about the adoption of the amendment were recommended by the industry and others who had experience in the matter of grants of instruments for authorization, and consequently felt that the protestants who had a right, a legitimate right, to protest were not adequately protected.

Mr. WIER. Mr. Chairman, will the gentleman yield to tell me who is the industry he refers to?

Mr. HARRIS. The radio and television industry involved in the Communications Act; and I might say to the gentleman that the parties who specifically presented the problems to us at that time were the members of the Federal Communications Bar of the District of Columbia who were closest to this problem.

As a result the amendment adopted provided that any party in interest could after the Federal Communications Commission approved a grant protest the grant and consequently it would be held up until full evidentiary hearings were held. It was felt at the time this provision was adopted that it was highly important and necessary; and, in fact, it was so considered from the evidence that was presented to the committee at that time. Since then experience has shown that there is a windfall, a loop-hole, and the public interest had not been served in many instances as it should be.

This legislation is rather in the nature of emergency legislation. The purpose of this bill is to prevent the abuse of a procedural provision in the Communications Act of 1934 by persons who are primarily concerned with the furtherance of their own private economic interests. These persons are in a position

to use existing provisions of section 309 (c) of the Communications Act to delay the institution of radio or television services in communities throughout the land.

Under the provisions of the Communications Act, the Federal Communications Commission may grant radio or television licenses without a hearing if the Commission finds that such a grant is in the public interest. Such grants are made usually by the Commission in situations where there is only a single applicant for a particular frequency in a community and where the Commission has determined that such applicant has the qualifications required by the Federal Communications Act.

If, in such a case, the Commission grants a license without a hearing, section 309 (c) of the act permits any "party in interest" to protest the authorization granted by the Commission without a hearing. Section 309 (c), which makes this protest procedure possible, was enacted into law by the Communications Act Amendments of 1952, usually referred to as the "McFarland Amendments." Congress, in enacting section 309 (c) attempted to provide a means whereby any "party in interest" would have an opportunity to obtain a hearing before the Commission where such party raises "legitimate public interest" considerations which indicate that the authorization granted should not have been made. In addition, the section was designed to maintain the status quo while the Commission held hearings on the issues raised in the protest. In other words, section 309 (c) required the Commission to postpone the effective date of the protested authorization. The only exception to this mandatory stay provision which section 309 (c) permits is in a situation where the Commission finds that the protested authorization is necessary to the maintenance or conduct of an existing radio or television service.

The protest provision has now been in effect for almost 3 years. Some 70 protests have been filed with the Commission in the last 2 years. Cases in which the Commission has turned down a protest have been appealed by the protestants to the courts and in several instances the courts have ordered the Commission to hold a full evidentiary hearing on the facts alleged in the protest.

However, it is perhaps a little difficult to understand the implication of the protest rule if the rule is discussed in the abstract. Let us, therefore, take this specific example: Assume, for example, that the Commission has granted to an applicant a license to broadcast functional music. Functional music is music that you hear in restaurants and other public places. It is sort of background and entertainment music. Such music in many places is provided by juke boxes. It is well conceivable, therefore, that the owner of a juke box might be considered a "party in interest" and could, therefore, file a protest against the license granted by the Federal Communications Commission for the broadcasting of functional music. If the Commission finds that the protestant is a "party in interest" and that he has specified with particularity the facts, matters, and things which he relies upon, then section

309 (c) requires that the application involved must be set for hearing on the issues set forth in the protest. Pending the hearing, the Commission must postpone the effective date of the authorization.

What does this mean? It means that the juke box owner has it in his power to postpone the effective grant of the broadcast authorization granted by the Commission in the public interest until after the Commission has held a full evidentiary hearing on the application. Since the calendar of the Commission is exceedingly crowded, the Commission may not reach the case for a year or two. During this entire period, the applicant may not broadcast because the setting down for hearing postpones the effective date of the applicant's authorization.

You can see that our juke box owner has been given a tremendously powerful weapon. This weapon was designed to safeguard the public interest. Unfortunately, it has been possible to turn it into a weapon to protect private economic interests against the competition flowing from new radio or television grants.

The case which I have put to you as an example is fiction. However, it has been possible for a protestant without any interest which has alleged a threat of economic injury to protest a television grant. When the Commission turned down the protest, the newspaper went to the courts. The case went all the way to the Circuit Court of appeals for the District of Columbia and that court directed the Commission to hold a full evidentiary hearing. Pending this hearing, of course, which may not be held for many months to come, the people in the community which was to be served by the television station will be without service from that station.

What then is H. R. 5614 seeking to do about the situation. As I have stated, one of the factors which has brought about the serious situation which we have found to exist has resulted from the construction which has been given by the Commission and the courts to the term "party in interest." Exceedingly broad classes of persons have standing as "parties in interest" to file protests. Not only may radio and television licensees protest grants of radio or television authorizations, respectively, but radio licensees may protest television grants, and vice versa, television licensees may protest radio grants. It does not stop there, however. A "party in interest" is not required to have a radio or television interest to give him standing as a party in interest. In our example, it was a juke box owner who might have alleged a threat of economic injury.

While the classes of persons who have standing as "parties in interest" to file protests are very broad, the committee believes that the continuance of abuses of section 309 (c) can be curbed without attempting to limit such classes of persons. Even if the committee should try to limit such classes of persons, it would find the task almost insuperable. Rather, therefore, than attempting to limit parties in interest, the committee recommends that section 309 (c) be amended to make it perfectly clear that the

Commission has the authority to dispose of protests without holding a full evidentiary hearing where the Commission finds that the facts alleged in the protest, even if proven to be true, would not constitute grounds for setting aside the grant being protested. This would give the Commission authority to demur any or all of the issues raised by the protestant. This authority would be similar to a court's authority to issue a summary judgment in appropriate proceedings.

The committee believes that a grant of this discretionary authority to the Commission would serve to protect the public interest, and to prevent the statute from being used merely as a vehicle to delay the institution of a competitive service.

Secondly, the committee recommends that section 309 (c) be amended so as to empower the Commission, even where a full evidentiary hearing is order, to continue the protested authorization in effect if the Commission affirmatively determines that the public interest so requires and sets forth in its decision the reasons for such determination.

I should like to mention at this point that the responsibility for section 309 (c) falls largely on the Federal Communications Bar Association which urged the adoption of the "protest procedure" in order to protect existing licensees against competing grants made without a Commission hearing. It should be stated for the record that when this committee held hearings on the McFarland amendment, the Communications Commission strenuously opposed the amendment as not being in the public interest.

I want you to know that the bar association, in the light of the experience of the last 3 years, has had a change of heart. The bar association is in full agreement with the Federal Communications Commission--a rare thing indeed--with regard to the bill reported by this committee. As a matter of fact, representatives of the association and the Commission sat down and agreed on certain additional amendments to the bill originally submitted by the Federal Communications Commission. The Committee has felt that these amendments are in the public interest and has incorporated them as committee amendments in the bill now before the House. The first amendment provides that the Commission shall afford the protestant an opportunity for oral argument before it may eliminate as insufficient any issue which has been raised.

Secondly, under the existing statute, there has been some doubt as to the Commission's authority to redraft the issues specified by the protestant in his protest. Such authority to redraft the issues is considered necessary since the issues set forth by the protestant may not accurately reflect the facts alleged in the protest and may include matters which are irrelevant to a determination as to whether the grant in question is in the public interest. The committee has amended the bill so as to spell out the right of the Commission to redraft issues based on the facts alleged in the protest. The committee amendment further makes it clear who has the burden of proof with regard to the issues in a protest hearing.

In closing, let me summarize briefly. With these amendments agreed to by the Federal Communications Commission and the Communications Bar Association, the committee believes that the bill will amend section 309 (c) of the Communications Act as to prevent the abuse of the protest procedure provided for in that section. The amendment would prevent persons who are primarily concerned with the furtherance of their own private economic interest to use the existing provisions of this section to delay the institution of radio or television services which the Federal Communications Commission, without a hearing, has approved as being in the public interest. The bill intends to accomplish this purpose in two ways: First, it would eliminate the necessity for holding full evidentiary hearings with regard to facts alleged by a protestant which, even if proven true, would not constitute grounds for setting aside the grant which the Commission has made. Second, it would give the Commission some discretion to keep in effect the authorization being protested where the Commission finds that the public interest requires the grant to remain in effect.

The Committee on Interstate and Foreign Commerce has carefully studied the experience under the present law and urgently recommends that the present law be amended as suggested in H. R. 5614 to the end that private economic interests may no longer use the protest procedure to keep radio and television services from communities who could otherwise enjoy such services without the delay now frequently caused through the protests filed by persons primarily concerned with furthering their own private economic interests.

In the last 2 years there have been some 70 grants in which protests have been made. The Federal Communications Commission felt they should have some discretion in these matters and under the language of this bill they will have. In some instances grants were approved without full hearings as the Commission did not find protest had legitimate basis. Appeals were taken from some decisions to the circuit court of appeals. The Commission was reversed in its decision and were directed to proceed with hearings under the construction which was given to this protest section.

Mr. Chairman, we have held hearings on this proposal. There appeared before the committee representatives of the Federal Communications Commission Bar, and Federal Communications Commission, and others who are interested in this problem.

Mr. BAILEY. Mr. Chairman, will the gentleman yield and define the others who are interested?

Mr. HARRIS. Any one who indicated an interest. A copy of the hearings is before the gentleman. I would be glad to have him look through it.

Mr. BAILEY. The gentleman does not remember who they were?

Mr. HARRIS. There were many witnesses that appeared. Everyone who indicated an interest and asked to be heard was heard.

I realize that the gentleman from West Virginia has a problem at Clarksburg, W. Va., which became a subject of the hearings. It is one of the cases that brought this matter to the attention of the Congress.

During the course of the hearings representatives of the Federal Communications bar presented what they then thought should be amendments to the bill. The members of the Federal Communications Commission came up and testified. Getting the two groups together there was recognition of the fact that some amendments may be desirable. I think it is perhaps important to note in this particular instance the representatives of the Federal Communications bar and the Commission have come to an agreement and are in full accord on this proposal. They presented joint recommendations as to amendments to the act which the committee accepted. We feel that all applicants and all protestants of record at this present time are fully protected.

Mr. DORN of South Carolina. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentleman from South Carolina.

Mr. DORN of South Carolina. Do I understand the distinguished gentleman from Arkansas assures us that these cases now pending before the Commission where testimony has already been heard will not be affected by this act? Frankly, I think that an act which would be retroactive to cover cases where testimony has already been heard is unwise. I would appreciate the gentleman's comment on this.

Mr. HARRIS. Yes, I will be glad to. It was my intention to have something to say about the retroactive features of it.

These is a case at Spartanburg, S.C., as there is at Clarksburg, W. Va., and others pending. In fact, there are some 70 such cases with the Commission today. Most of these cases pending have already been designated to full evidentiary hearings. I would say the situation in which the gentleman from South Carolina is interested and the parties to that contest included in these cases which have already been designated to full evidentiary hearings; therefore this will have no effect whatsoever on pending cases and I intend to include with my statement a letter from the Chairman of the Commission to that effect.

Mr. BAILEY. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentleman from West Virginia.

Mr. BAILEY. The gentleman will agree that the arbitrary action of the Commission which the court has upset has already caused a series of approximately 70 cases. I may say to the gentleman that the passage of this legislation granting the Commission the authority to do what they have been doing and want to legalize now will cause the greatest source of litigation throughout this country that has occurred on any question in half a century.

Mr. HARRIS. I cannot agree with the gentleman, and I believe if he were familiar with the facts, as the testimony revealed to our committee, he would have a different viewpoint also. It is not because of the Commission that we have these cases. It is because of section 309 (c) of the Federal Communications Act that we have these cases pending. All 70 of them have not been appealed to the courts or passed on by the courts; there have been only a very few of them. But because of the fact that we have these cases pending before the Commission, they have to go to full evidentiary hearings, and it is going to be a long time, a year or year and a half or 2-years, or longer, before the Commission can complete them.

It has been determined that the protestants in many instances have no legitimate right to protest whatsoever, but because of the construction of the act, under the provisions of the amendment of 1952, the Federal Communications Commission must order all of these to hearing, and we are attempting to correct this unjust and inequitable procedure. The public interest requires it.

Mr. BAILEY. Does the gentleman believe that it would be safe to vest that much arbitrary authority in any group like the Federal Communications Commission?

Mr. HARRIS. Our committee fully believes that it is not only safe, but it is the proper thing to do in order that the public interest can be protected.

Mr. DORN of South Carolina. Mr. Chairman, will the gentleman yield further?

Mr. HARRIS. Yes.

Mr. DORN of South Carolina. The gentleman has been most kind, and I appreciate it. I am wondering if this is a gentleman's agreement between the members of the committee and the Commission, or is there something in the bill which would protect these cases now before the Commission?

Mr. HARRIS. Well, of course, the case in which the gentleman is interested is already in hearing. The Commission advises me in the Spartanburg case they have already ordered it to full evidentiary hearing and it is now underway. So there is nothing in this that can stop or affect that whatsoever.

Mr. DORN of South Carolina. I thank the gentleman.

Mr. HARRIS. And also the case of Clarksburg, W. Va.; in which the gentleman from West Virginia is interested. As I have been advised by letter of July 6, 1955, I will say to the gentleman that these proceedings were the subject of an appeal to the Court of Appeals for the District of Columbia, and on June 9 the court handed down a decision in the case reversing the Commission's previous action. The mandate from the court was issued June 27th, and pursuant to the mandate the Commission

did on July 6th designate the proceedings for full evidentiary hearing. So therefore the Clarksburg case is likewise mandated for full evidentiary hearing, and they will proceed accordingly.

Mr. BAILEY. Mr. Chairman, if the gentleman will yield further, I have a copy of the same letter the gentleman has, stating the Commission's intention to abide by the court's decision. I am thinking of what lies in the future if we permit the Commission to proceed in the manner which it has been proceeding and in that way put legal approval on some of their acts in the past. That, I think, is the main objective of this legislation.

Mr. HARRIS. The court said under the construction placed on the protest section the Commission had no discretion whatsoever. What we say now is that the Commission does have some discretion in these matters, in the public interest, and when there is protest they will have oral argument to find out whether or not it is a legitimate protest, the Commission can see that the people who are entitled to the service can get it.

Mr. BAILEY. The gentleman spoke of oral hearings. Did the gentleman ever hear of anybody getting into court on the basis of oral hearings? I always thought there had to be a record established.

Mr. HARRIS. Of course, that is the only way to establish the record. The committee believes that this legislation is highly necessary, and it is, of course, a matter of emergency, and we bring it to you, in order to try to get this matter cleared up during this session of the Congress. It has the complete approval of the Federal Communications Commission and the Federal Communications Bar of the District of Columbia.

Mr. O'HARA. of Minnesota. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentlemen from Minnesota.

Mr. O'HARA of Minnesota. The gentleman from Arkansas I am sure will agree with me that in the controversies which we have had before the committee on legislation affecting the Federal Communications Act, this is the first time that the Federal Communications Bar and the Federal Communications Commission agreed upon a principle which is involved in this bill. I am sure the gentleman would agree with me that these gentlemen who are members of the Federal Communications Bar are, most of them, representing these people who are involved in the litigation and who are the protestants in these cases.

Mr. HARRIS. That is true, and they feel the rights of interested parties are fully protected under the provisions of this bill.

Mr. O'HARA of Minnesota. Exactly.

Mr. HARRIS. It is certainly interesting that these two groups have gotten together for the first time in our experience,

and that has been a good many years.

The purpose of this bill, Mr. Chairman, is to provide that anyone who merely indicates that he has an interest because of some economic, competitive feature may not just hold up an application and prevent other people from obtaining the service. He must show a legitimate interest. I do not believe this Congress should permit any kind of blackmail to prevail in this country and I do not believe any Member of this House would so recommend.

FEDERAL COMMUNICATIONS COMMISSION,

Washington, D. C., July 6, 1955.

HON. OREN HARRIS,

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

DEAR CONGRESSMAN HARRIS: I am in receipt of your letter of July 2, 1955, referring to the Clarksburg, W. Va., protest proceedings and inquiring what effect, if any, the proposed amendments to section 309 (c) of the Communications Act, contained in H. R. 5614, would have on future Commission proceedings in this case.

As you know, the Clarksburg proceeding was the subject of an appeal to the Court of Appeals for the District of Columbia Circuit. On June 9, that court handed down a decision reversing and remanding the Commission's previous actions in the case. The mandate from the court was issued on June 27 and received by the Commission on June 28, 1955. Pursuant to this mandate, the Commission has today designated the proceeding for full evidentiary hearing. At the same time, the Commission postponed the effectiveness of the Clarksburg grant pending a final decision in the new hearing which has been ordered.

I have discussed the problem raised in your letter as to the effect of adoption of H. R. 5614 upon the Clarksburg proceeding with the other members of this Commission. They are in agreement with me that the public interest would not be served by reconsidering the designation of the case for evidentiary hearing or the postponement of the effective date of the grant which has been protested, should the amendments to section 309 (c) be subsequently adopted at this session of Congress. And we do not believe that there is anything in H. R. 5614, as it is presently written, which would in any way require the Commission to reverse either of these determinations.

Since your inquiry raises the question of the retroactive effect, if any, of H. R. 5614 upon the proceedings in Clarksburg, and in view of the general discussion of this matter at the hearings before your subcommittee, the Commission has given serious consideration to this question generally as well as in connection with the particular Clarksburg proceeding. It is our opinion that in the absence of any congressional statement of intent on this matter, it might be legally possible for the Commission to reconsider previous determinations as to whether evidentiary hearings are required or grants should be stayed in these cases which are still pending before the Commission. In general we believe, however, that the public interest would not be served by any such reconsideration. The only exception to this view which the Commission has is with respect to cases where the Commission has issued a final decision denying a protest, either before or after hearing, and in which, pending a court appeal, the grantee has constructed its station and begun operation. Under these special circumstances the Commission believes that if it is reversed by the court of appeals, it should have the opportunity, in the event that the amendments to section 309 (c) have been enacted into law, conduct any further proceedings upon the basis of the amended language of section 309 (c).

Sincerely yours,
George C. McConaughy,
Chairman.

(Mr. HARRIS asked and was given permission to revise and extend his remarks.)

Mr. O'HARA of Minnesota. Mr. Chairman, I yield such time as he may require to the gentleman from Iowa [Mr. DOLLIVER].

(Mr. DOLLIVER asked and was given permission to revise and extend his remarks.)

Mr. KEATING. Mr. Chairman, would the gentleman from Iowa yield for a brief question?

Mr. DOLLIVER. I yield to the gentleman from New York.

Mr. KEATING. Was there any opposition before the gentleman's committee expressed to this measure from any source?

Mr. DOLLIVER. We had some communications from people who are directly interested in matters now pending before the Commission but, as has been expressed by the gentleman from Arkansas [Mr. HARRIS] it was not our opinion that these matters would be affected by this proposed legislation.

Mr. KEATING. But there was no one expressing opposition except those who had a specific interest?

Mr. DOLLIVER. That is entirely correct.

Mr. Chairman, one of the very fine things about the American system of government is that we have three separate branches:

the legislative, the executive, and the judicial. Every now and then the legislative branch of the Government enacts a law which has to be interpreted by the judicial branch of the Government. Sometimes when those judicial interpretations are made, the judicial branch of the Government sees the situation in a little different light than was contemplated by the legislative branch. That is precisely what happened in the situation now before us.

In the so-called McFarland Act that we passed in 1952, there was a provision for protesting a grant of a radio or a television license. The provisions as we now look upon them may have been rather hastily or even loosely drawn.

In the interpretation of those provisions, the judiciary--that is, the circuit court of appeals--in two different instances, I believe, determined that whatever the allegations are in the petitions, whatever may be the merits or lack of merits, the Federal Communications Commission is required to hold an evidentiary hearing. That is to say, the protest cannot be disposed of, no matter what matters are alleged in the protest, unless evidence is taken.

That may not seem a very important matter. Actually it has been a very serious impediment to the work of the Federal Communications Commission. It has tied up pending applications, as the gentleman from Arkansas [Mr. HARRIS] has already told you, to the number of about 70. Even if heard upon the merits and if everything set out in the protest were proven, some of them would not justify a holding up of the application and a denial of the wavelength to the applicant. The filing of a protest under such conditions is a delaying action only, and should have no standing. This measure is designed to correct that situation.

To speak about the problem in a little different aspect, the Members of the House who are lawyers are familiar with the term "demurrer," which is used in the pleadings in a lawsuit. Where a pleading is filed, then the man who makes the demurrer says, "Well, what of it? If you prove everything you say you can prove, what difference does it make?"

So it is in this bit of legislation we are considering. We are saying that the Communications Commission shall have the right to look at the four corners of a protest against an application and say, "Well, even if you prove everything that is in this protest, it does not make any difference because it does not justify a denial of the application against which the protest is filed."

When we went into these hearings, and I think I attended all the hearings, I was a bit skeptical as to the necessity for this legislation. I participated in the consideration of the McFarland amendment some years ago, and I thought we did a pretty good job at that time.

As the evidence developed, however, it became quite apparent to me that here was a procedural provision in this law which could and actually had tied up the operations of the Communications Commission.

Specifically in certain areas it has tied their hands to the point where considerable segments of the people of the United States are not receiving television and radio service to which they ought to be entitled. This legislation is designed to correct that situation, to facilitate and accelerate the use of these facilities which are under the control of the Communications Commission.

Mr. SPRINGER. Mr. Chairman, will the gentleman yield?

Mr. DOLLIVER. I yield to the gentleman from Illinois.

Mr. SPRINGER. I was interested in the separate statement of Commissioner John C. Doerfer, in which he gave this illustration, which brings out the point the gentleman has made:

Recently, out of 1,400 minutes of deliberation by 7 members of the Commission, 397 minutes were spent considering protest matters, or a total of 28 percent of full Commission time. This constitutes a demand for an undue proportion of time on matters which eventually prove to contribute little, if anything, to the protection of the public interest.

That is the gentleman's position, is it not?

Mr. DOLLIVER. Precisely so.

Mr. SPRINGER. In my particular area I found this to be true under the old rule, and I am talking about the one that exists at the present time. There was a situation where one station might be in existence and operating and another one starts to come into existence, and the owner of the first station rushes in and protests just for the very purpose of delaying the other party in getting on the air--that is the sole purpose of the protest--with the result that the people in that area do not get the service of the other person who eventually, a year or 2 or 3 years later, does get on the air. That is the kind of thing which has been used in this protest procedure, merely to save time and keep people off the air and not give the Commission the chance really to decide the issue on the merits.

Mr. DOLLIVER. The legislation now existing opens the door wide to that kind of improvident protest. There even have been suspicions by some people that the protest section as now set up is used as sort of a medium for blackmail and hijacking against the applicant who has a legitimate right to have his case heard.

Mr. SPRINGER. I think in the beginning when the McFarland Act was passed the fact of it was that the Commission went too far the other way and did not allow people to get their protest in in time. Was that not true?

Mr. DOLLIVER. I think perhaps that may be correct.

Mr. SPRINGER. But this provision 309 (c) is of such a nature that it does practically allow delay on almost any excuse. What the pending bill actually does is find rather a middle ground in this whole procedure. Is not that true?

Mr. DOLLIVER. That is correct. I may say to the gentleman that Commissioner Doerfer, to whom he referred, was originally in favor of repealing the whole section 309 (c), as appears in his

testimony. But the Communications Commission, as I understand, agreed to the amendments that were offered and agreed upon the Federal Communications Bar.

Mr. SPRINGER. May I ask the gentleman this further question: It is true that most of the practice before the Federal Communications Commission on this section 309 (c) has been by Washington, D.C., members of the bar, is it not?

Mr. DOLLIVER. That is entirely true.

Mr. SPRINGER. And they have come to realize the fallacy of this kind of procedure, and they are almost without exception recommending this change in order to get away from this delay?

Mr. DOLLIVER. Their organization, the Federal Communications Bar, I believe, did agree to the legislation now before the House.

Mr. SPRINGER. I thank the gentleman.

Mr. WILLIAMS of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. DOLLIVER. I yield.

Mr. WILLIAMS of Mississippi. A moment ago someone inquired as to the opposition to this legislation before the committee. If I recall correctly, Mr. Cottone was the only witness who appeared and took exception to the purposes of the legislation. If I recall correctly, I believe the basis of his opposition can be narrowed down to this one issue, and that is his contention that there would be a psychological advantage on the part of the temporary holder of the certificate pending the evidentiary hearing merely by virtue of the fact that he happened to have the certificate. Is that not just about the basis of his opposition?

Mr. DOLLIVER. May I further say Mr. Cottone, I believe, is in accord with the present bill. There were certain amendments which were proposed and accepted by the committee which I think has now satisfied him and his group.

Mr. WILLIAMS of Mississippi. I believe the gentleman is correct. I do not believe anyone appeared in opposition to the entire bill.

Mr. DOLLIVER. I think that is correct.

Mr. WILLIAMS of Mississippi. Some of them, of course, had suggestions for amendments to the bill.

Mr. DOLLIVER. Mr. Chairman, let me say this is wholly a procedural matter. It does not affect the legitimate rights of anybody. It is a necessary amendment to a law which will enable the American people to get fuller and more prompt use of the great facilities of the ether waves so that they can have television and radio more promptly than they get it now under the present provisions.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. DOLLIVER. I yield.

Mr. HARRIS. Did not the hearings reveal that it is possible for the jukebox operator in a community to file a protest and become a party in interest and delay or hold up a grant for an indefinite period of time?

Mr. DOLLIVER. In the hearings we were informed that a jukebox operator could hold up an application for an indefinite period of time awaiting the evidentiary hearing. Even though there was no substantial interest shown by him, and even if he proved everything he said in his protest, he would not be granted relief. Under the present rulings of the court, the evidentiary hearing must be held before the Federal Communications Commission can make a decision on it.

Mr. O'KONSKI. As one who is acquainted with the radio and television industry, and also with the working of the Federal Communications Commission, I wish to commend the committee for bringing out this much needed legislation. I happen to be one who agrees with Commissioner Doerfer. I think the country would be better off if the entire section were stricken. However, the bill reported by the committee is definitely a step in the right direction and I compliment the committee on bringing it out.

Mr. DOLLIVER. I thank the gentleman. I am well aware of the fact that he is well informed in this field.

Mr. FLYNT. Mr. Chairman, will the gentleman yield?

Mr. DOLLIVER. I yield.

Mr. FLYNT. I would like to point out, if I may, in connection with the remarks made by the gentleman from Iowa that this legislation has no application whatsoever which would affect the rights of any possible applicant for any new or existing radio or television rights.

Mr. DOLLIVER. That is entirely correct.

Mr. FLYNT. This is simply a clause set in there which under present and existing law makes it possible for a person who has no interest and no desire for a competing radio or television station under the law as it is now written to absolutely take an existing facility off the air and deny the people of the community being served the right to be served by this communication facility.

Mr. DOLLIVER. The gentleman from Georgia has spoken very well.

Mr. SLYLOR. Mr. Chairman, will the gentleman yield?

Mr. DOLLIVER. I yield.

Mr. SLYLOR. I certainly hope that is the aim but page 2, lines 17 to 19, give me some concern as to whether or not that would be the actual effect because it reads:

The Commission may in such decision redraft the issues urged by the protestant in accordance with the facts or substitute matters alleged in the protest.

Would not these very words all of the Commission to do just what the gentleman says the purpose of the bill is to avoid?

Mr. DOLLIVER. Not in my opinion, if the gentleman is asking my opinion.

I conclude, Mr. chairman, by saying that I hope this bill will be passed promptly and unanimously.

Mr. PRIEST. Mr. Chairman, I yield 7 minutes to the gentleman from West Virginia [Mr. STAGGERS].

Mr. O'HARA of Minnesota. Mr. Chairman, I yield the gentleman 5 minutes also.

Mr. STAGGERS. I appreciate the time granted me.

Mr. Chairman, I believe that by enacting this bill it will be a step backward to the legislation we had in 1952. At that time, compelling questions came before the Congress and the Congress amended the Communications Act and put in these provisions. This proposed legislation would simply wipe them out again and go back. I believe if we do enact this bill, within the next 2 or 3 years we will be back again enacting the same legislation that we are wiping out today.

The protests in 1952, and before that time, were that the Federal Communications Commission would not grant hearings to the applicants for radio and television stations; and the Congress said if that is true we will draw a law requiring them to do it. What we are doing today with this legislation is going back to the point that the Commission again would not have to grant hearings. Why should not any group or any applicant for a television or radio station, or any group that is interested in the granting of licenses, have a hearing? It is too important a question to say that the majority of the Commissioners shall rule as to whether one certain group shall have a license or another certain group shall have a license without hearing all the facts? I know the proponents of the bill say that if the protestant comes in and makes a good case he can have a hearing. However, that is not mandatory under this regulation, and I do not believe any one of the men who are proposing this bill will say that it is.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield.

Mr. HARRIS. If the Commission were to make an arbitrary decision, certainly the protestant would have a right of appeal to the court. Is that not true?

Mr. STAGGERS. Yes, but I feel as does my colleague from West Virginia, Mr. BAILEY, that only after oral hearings could they deny. Then what basis would they have to go into court?

Mr. HARRIS. Any arbitrary or capricious decision that the Commission might make in any case.

Mr. STAGGERS. He is going to determine whether it is arbitrary or capricious?

Mr. HARRIS. The court.

Mr. STAGGERS. If that is the case, we are not getting away a bit, then, from these hearings.

I heard the work "blackmail" referred to in connection with the granting of licenses, that anyone who wanted to could go in and protest, pay them under the table or some other way, and get a license. It is pretty difficult to see how that could happen.

I would like to refer to the decision in a West Virginia case. At 5 o'clock one evening one member of a group decided to withdraw, but the license was granted the next morning.

I am only protesting here the fact that I believe that every person who has a right to apply for a radio license should have the right to a hearing, however small he might be, and that the large chains, the men with money, or who have influence in Washington with the Federal Communications Commission should not be the only ones who have a right to a radio or television station. I believe that is exactly what is going to happen.

The law, as now written, says that the Commission has the right to say whether they have a proper protest or not, and if they do not have a proper protest it is not lapsed.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield.

Mr. HARRIS. If the gentleman stakes his position on the basis of what he has said, then he would withdraw his objection to this bill, because it is quite obvious from the Court Decisions, several cases that have been decided, the Commission has been reversed under proceedings of 309 (c) to the effect that the Commission does not have any discretion whatsoever. In one it held that in the case of the applicant asserting he was a party in interest, whether he had a legitimate interest or not, the Commission has no discretion and must hold evidentiary hearings.

Mr. STAGGERS. I wish the gentleman would cite the case he uses as a basis for that.

Mr. HARRIS. It is the decision of the courts.

Mr. STAGGERS. I would like to see such a court decision. Can the gentleman cite one for me?

Mr. HARRIS. The gentleman will remember the Clarksburg, W. Va., case decided in the circuit court of appeals.

Mr. STAGGERS. Holding that they have a legitimate right to protest.

And if they do not have a legitimate right to protest then they would not have a right to the hearing.

I would like to refer to statements from men who appeared as witnesses. My good friend from Mississippi, a member of the committee, quoted Mr. Williams. He came in to protest. Let me refer briefly to his statement.

He said he was concerned with the intended modification of the protest provision, particularly from the standpoint of its effect on the UHF stations; that the UHF stations throughout the country have had a bitter experience and have made vigorous efforts to try to correct the situation which is very common in this field.

A little later he also makes the statement that it has only been by a complete reliance on the present provisions of the statute, namely, the protest provision, in a great many instances that their situation has not been made worse than it might have been. He says their situation has been brought about by reason of this protest provision being included.

I know that most of the people in the country have heard of the situation of the UHF stations. He says it is only because of this one provision, that they have not been completely wiped out of existence.

My position is this: I was not on the subcommittee, did not have an opportunity to hear any of the hearings. The morning it was brought up in the full committee it was brought up by unanimous consent and had not been scheduled. I had in my files some protests against the Commission. On that morning it was voted out we had little discussion, but I am certain that the members of the full committee did not get the significance of it. I did say I had enough confidence in the other members of the committee to go along and allow it to come up for consideration by unanimous consent. However, I did protest the bill being reported out under the conditions that existed.

I believe that if we give this power to the Federal Communications Commission, the small person in the United States who wants a radio station or wants to start a television station will not have a chance before the Federal Communications Commission. I have protested in committee many, many times, the power that has been given by this Congress to the commissions downtown. Today they are running the Government of the United States regardless of what the Congress says. Unless we enact laws to curtail their power from time to time they arbitrarily take unto themselves those powers that we grant and a lot more, too. If they had had hearings to consider these protests this question would not have come up.

I know that the proponents of the bill will say that they do not have the personnel and that there would be constant hearings. If it is so important a question, then the Congress should grant money to the Federal Communications Commission so that they would have an opportunity to have a hearing for every applicant who wants a license.

Mr. FLYNT. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Georgia.

Mr. FLYNT. In this connection I would like to point out to the gentleman from West Virginia that the only time the Federal Communications Commission can refuse to grant a hearing is when a majority of the Commission rules that if everything contained in the protest is true the protest still could not be allowed.

Mr. STAGGERS. Under present or proposed law?

Mr. FLYNT. Under present law.

Mr. STAGGERS. What about under the proposed law?

Mr. FLYNT. Both of them.

Mr. STAGGERS. I am certain that is true, but that means a majority of those present. That could be half many for a Commission hearing? It would not have to be half and group or half another group. It could be under many different circumstances. I think the gentleman from Georgia will agree with me on that.

Mr. Chairman, I am not here to protect the interests of any one single group. I say that the smaller groups, if they want an application for license granted, should have a hearing. That is our system of law. It has been made plain enough that under section 309, if the protest is not legitimate, it does not have to be allowed. My friend makes that very clear. That is in their discretion. I say in the Clarksburg case the protestants had a legitimate excuse for the case would not have been tried in court. The court decided they should have a hearing.

Mr. Chairman, I am against the proposed legislation. I do not say it is an abridgment of our free rights, but it is an abridgment of the rights of all the people to come in and be heard before a Commission and have a complete hearing. The bill should be defeated. It should be sent back to the committee, amended and brought back, because there are some provisions of this bill that could be very useful.

Mr. PRIEST. Mr. Chairman, I yield 3 minutes to the gentleman from West Virginia [Mr. BAILEY].

Mr. BAILEY. Mr. Chairman, I am opposed to this legislation because it is dangerous. I am opposed to granting unlimited authority to any bureau like the Federal Communications Commission to deny any individual the right to a hearing. I am opposed to this legislation because it will lead to the acquisition of what few remaining television and radio channels throughout the United States have not already been acquired. It will lead to their acquisition by groups already organized and well set up in the radio and television business. It is dangerous legislation because of the provision in it and the amendment put in the present bill changing the act as it was passed in 1952 to provide oral hearings. It would be almost impossible for a party in interest whom the Commission decided against to get an oral hearing. It would be almost impossible for him to get into court on the basis of just an oral hearing. The object of it and the people back of it is this: It is a deal between the Federal Communications Commission and this group of attorneys who are practicing in the field of television and radio. There was no public interest and no public demand for this legislation, and few, if any, people who actually represented the public were present and gave testimony at the hearings before the subcommittee of the Committee on Interstate and Foreign Commerce. I think the legislation should go back to the committee for more mature consideration. There is some other way of finding and smoothing out the administration of these laws pertaining to the Federal Communications Commission in denying the average American citizen his day in court. And that is exactly what this does.

Mr. PRIEST. Mr. Chairman, I yield such time as he may desire to the gentleman from Georgia [Mr. FLENT].

(Mr. FLENT asked and was given permission to revise and extend his remarks.)

[Mr. FLYNT addressed the Committee. His remarks will appear hereafter in the Appendix.]

Mr. PRIEST. Mr. Chairman, I yield such time as he may desire to the gentleman from Pennsylvania. [Mr. QUIGLEY].

(Mr. QUIGLEY asked and was given permission to revise and extend his remarks.)

Mr. QUIGLEY. Mr. Chairman, I am opposed to this bill and urge the Members to vote against it. On its face it appears to be a harmless measure which merely attempts to prevent disinterested individuals from unduly delaying actions of the Federal Communications Commission by demanding and obtaining dilatory hearings. If this is all the bill would do it most certainly would not have my opposition. I am fearful, however, that if this measure passes it may further weaken the position of the small, independent radio and television stations--and particularly those television stations assigned to the ultra high frequency channels--in their struggle to maintain competition in broadcasting.

Recent actions by the Federal Communications Commission have shown an alarming disposition to encourage monopolies in the television industry. It was this trend which prompted me to request the House Interstate and Foreign Commerce Committee to conduct an investigation of the Federal Communications Commission.

Furthermore, I think it is significant that FCC's request for this legislation was not joined in by Miss Frieda Henneck, then a member of the Commission, and, as everyone knows, an ardent supporter of the independent stations. I think it is further significant that this bill was most ardently supported by Commissioner John Doerfer, whom I believe all of you will agree, has not exactly shown himself to be the champion of the small, independent station.

I suggest that the wisest course of action for the House to follow today is to send this bill back to committee for further study to make certain that its passage will really prove to be in the public interest.

Mr. PRIEST. Mr. Chairman, I ask unanimous consent that all Members may extend their remarks at this point in the RECORD in connection with the bill under consideration.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. OLVERTON. Mr. Chairman, the bill under consideration amends section 309 (c) of the Communications Act of 1934. As stated in the report, the purpose of the amendment is to prevent the abuse of the protest procedure, provided for therein, by persons who are primarily concerned with the furtherance of their own private economic interest, and who are in a position to use the existing provisions of the section to delay the institution of radio or television services which the Federal Communications Commission, without a hearing, has approved as being in the public interest. The bill intends to accomplish this purpose by--

First, Eliminating the necessity for holding full evidentiary hearings with respect to facts alleged by a protestant which, even if proven to be true, would not constitute grounds for setting aside the grant which the Commission has made; and

Second, Giving the Commission some discretion to keep in effect the authorization being protested where the Commission finds that the public interest requires the grant to remain in effect.

The protest provision has now been in effect for almost 3 years. On the basis of the experience with the existing provisions of the section, as presented during the hearings on this bill by the Federal Communications Commission as well as the other witnesses, including broadcasters and representatives of the Federal Communications Bar Association, I am convinced of the necessity for amending section 309 (c).

Two factors in particular necessitate the making of changes.

First, court interpretations of section 309 (c) have created considerable doubt whether the Commission now has the authority to dispose of any protest without holding a full evidentiary hearing, once the protestant has shown himself to be a party in interest and has detailed his objection to the grant. Thus, a full evidentiary hearing may now be required although the facts alleged in the protest, even if true, would not be grounds for setting aside the grant. This results in a considerable and useless administrative burden on the Commission.

Second, except in the case of an already existing service, the provisions of section 309 (c) make it mandatory for the Commission to stay the effectiveness of the protested grant pending the outcome of the full evidentiary hearing. As a result of such a stay the public may be deprived unnecessarily for a prolonged period of time of a new radio or television service.

The situation resulting from these factors is aggravated further by reason of the fact that broad classes of persons have standing as "parties in interest" to file protests. Not only may radio and television licensees protest grants of radio or television authorizations, respectively, but radio licensees may protest television grants and vice versa television licensees may protest radio grants, and even newspapers without radio interests which have alleged a threat of economic injury may protest radio or television grants. In many of these cases the protests are based on grounds which have little or no relationship to the public interest.

While the classes of persons who have standing as "parties in interest" to file protests are very broad, it is believed that the continuance of abuses of section 309 (c) can be curbed by the amendments to section 309 (c) proposed in this bill without attempting to limit such classes of persons.

In order to meet the first factor mentioned above, the bill makes perfectly clear that the Commission has the authority to dispose of protests without holding a full evidentiary hearing where the Commission finds that the facts alleged in the protest,

even if proven true, would not constitute grounds for setting aside the grant being protested. This would give the Commission authority to demur any or all of the issues raised by the protestant, and would be similar to a court's authority to issue a summary judgment in appropriate proceedings. This would serve to protect the public's interest and to prevent the statute from being used merely as a vehicle to delay the institution of a competitive service.

In order to meet the second factor mentioned above, section 309 (c) is amended so as to empower the Commission, even where a full evidentiary hearing is ordered, to continue the protested authorization in effect if the Commission affirmatively determines that the public interest so requires and sets forth in its decision the reasons for such determination.

The committee has amended the bill to provide that the Commission shall afford the protestant an opportunity for oral argument before it may eliminate as insufficient any issue which has been raised. This amendment was proposed during the hearings on the bill by the Federal Communications Bar Association. The Commission has indicated that it has no objection to this requirement being written into the statute.

Under the existing statute there has been some doubt as to the Commission's authority to redraft the issues specified by the protestant in his protest. Such authority to redraft the issues is considered necessary since those set forth by the protestant may not accurately reflect the facts alleged in the protest and may include matters which are irrelevant to a determination as to whether the grant in question is in the public interest. The bill has been amended so as to, first, spell out the right of the Commission to redraft issues based on the facts alleged in the protest, and second, make it clear who has the burden of proof with respect to the issues in a protest hearing. The Commission has agreed to these changes, which were proposed by the Federal Communications Bar Association.

I trust the bill will have the approval of the House.

Mr. PRIEST. Mr. Chairman, I yield 4 minutes to the gentleman from Mississippi [Mr. WILLIAMS].

Mr. WILLIAMS of Mississippi. Mr. Chairman, as I understand this legislation, based on the hearings and the committee consideration and at the risk, perhaps of oversimplifying it, I would say that basically the points in issue here are twofold: First, the legislation permits the Federal Communications Commission, in its discretion, to grant a temporary permit to an applicant, even where there may have been a protest filed, to operate pending a hearing on the protest. Certainly, the public interest would not be placed in jeopardy by permitting temporary operation pending the protest. I fail to see whose rights would be jeopardized in such a case, particularly in view of the fact that an evidentiary hearing must be held and a final decision made. It appears to me that the person who accepts a temporary

license or permit under such circumstances does so with his eyes open and at his own risk.

It might be pointed out further that it is not mandatory upon the Commission to grant this temporary permit, but it may be done at their discretion, but only when they feel that the public interest would be served by granting it.

In the second instance, this bill permits the Commission to do in effect what the courts may do, which is to sustain a demurrer where the charges and allegations of the protestant fail to make a case.

Based on the hearings before our committee, I was fully convinced that this proposed legislation is necessary in order to obviate many dilatory protests which are filed in many of these cases. It would eliminate redtape, which we all abhor, and, in my opinion, it makes for a fair and orderly procedure in the granting of these licenses.

Mr. BAILEY. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield to the gentleman.

Mr. BAILEY. Is the gentleman aware of the fact that arbitrary action of the Commission resulted in the Durant network losing all facilities rights in the city of Pittsburgh and that a suit has already been filed in that matter? And other suits have been filed; one, for instance, by a constituent of my colleague [Mr. STAGGERS] from Morgantown, W. Va., who had already filed for that station. By the action of the Commission, they were left out. They are all going to court.

Mr. WILLIAMS of Mississippi. I must say that I am not familiar with that particular case. Perhaps someone else on the committee may be able to answer the gentleman.

Mr. PRIEST. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield to the chairman of the committee.

Mr. PRIEST. If I understand the situation--and I believe I am correct in this--these were not protests but counterapplications, were they not, which is an entirely different category?

Mr. BAILEY. That is true.

Mr. PRIEST. It does not affect counterapplications whatsoever.

Mr. BAILEY. What rights do they have?

Mr. PRIEST. They may file a protest against an applicant without applying for the wavelength that the applicant is applying for. They may file a protest. It does not affect counterapplications.

Mr. BAILEY. If this bill passes, the Commission could say to them that the protest has no meaning and could disregard it.

The CHAIRMAN. The time of the gentleman has expired.

Mr. O'HARA of Minnesota. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. SPRINGER].

Mr. SPRINGER. Mr. Chairman, I should like to ask the gentleman from Mississippi [Mr. WILLIAMS] this one question. It has been said here on the floor of the House that a protestant does not have his day in court. He has his day in court the same as if he had filed a lawsuit, does he not?

Mr. WILLIAMS of Mississippi. Under this bill, yes.

Mr. SPRINGER. And the Commission acts upon it in the same way that a judge would if the gentleman or I filed a case in the court here in the city of Washington. This is a situation wherein the judge decides upon the allegation itself, and if the complaint does not state a case, just as it would be, may I say to the gentleman from West Virginia [Mr. BAILEY] in West Virginia courts, the judge throws him out of court and decides he is not entitled to introduce any evidence, because, taking all the facts into consideration, he has not made out a case upon which there could be a hearing. Is not that true?

Mr. WILLIAMS of Mississippi. The gentleman is absolutely correct. Of course, as he well knows, under the law at present anyone who can establish himself as a party in interest, no matter now indirectly he may be in interest, as a competitor or on behalf of the public, can by filing a protest stop the radio station or television station from going into operation. Under those circumstances, the filing of dilatory protests, of course, jeopardizes in many cases the public interest. Also, it is contrary to the interest of the person who is seeking the permit.

On the other hand, under the bill that is before the House now, a temporary permit may be granted at the discretion of the Federal Communications Commission in the event they feel it is in the public interest to grant that temporary permit. Certainly nobody can say that anybody's interests or rights are jeopardized under those circumstances, pending a full evidentiary hearing.

Mr. SPRINGER. The gentleman, I think, has stated the case correctly.

Mr. O'HARA of Minnesota. Mr. Chairman, this proposed legislation came from our committee unanimously with the possible exception of the gentleman from West Virginia, who I believe voted present. If the gentleman wishes to correct that statement, I will be happy to have him do so.

Mr. STAGGERS. I voted against bringing out the bill.

Mr. O'HARA of Minnesota. The gentleman's vote was the only vote against the bill.

Mr. Chairman, I think it is a good legislation, sound legislation, and I hope it becomes law.

The CHAIRMAN. The Clerk will read the bill for amendment.

The Clerk read as follows:

Be it enacted, etc., That subsection (c) of section 309 of the Communications Act of 1934, as amended, is amended to read as follows:

"(c) When any instrument of authorization is granted by the Commission without a hearing as provided in subsection (a) hereof, such grant shall remain subject to protest as hereinafter provided for a period of 30 days. During such 30-day period any party in interest may file a protest under oath directed to such grant and request a hearing on said application so granted. Any protest so filed shall be served on the grantee, shall contain such

allegations of fact as will show that protestant to be a party in interest, and shall specify with particularity the facts relied upon by the protestant as showing that the grant was improperly made or would otherwise not be in the public interest. The Commission shall, within 30 days of the filing of the protest, render a decision making findings as to the sufficiency of the protest in meeting the above requirements; and, where it so finds, shall designate the application for hearing upon issues relating to all matters specified in the protest as grounds for setting aside the grant, except with respect to such matters as it may prescribe, as well as whether it is adopting as its own any of the issues resulting from the matters specified in the protest. In any hearing subsequently held upon such application issues specified by the Commission upon its own initiative or adopted by it shall be tried in the same manner provided in subsection (b) hereof, but with respect to issues resulting from matters set forth in the protest and not specifically adopted by the Commission, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the protestant. The hearing and determination of cases arising under this subsection shall be expedited by the Commission and pending hearing and decision the effective date of the Commission's action to which protest is made shall be postponed to the effective date of the Commission's decision after hearing, unless the authorization involved is necessary to the maintenance or conduct of an existing service, or unless the Commission affirmatively finds for reasons set forth in the decision that the public interest requires that the grant remain in effect, in which event the Commission shall authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing."

The CHAIRMAN. The Clerk will report the committee amendments. The Clerk read as follows:

Page 2, line 13, after the comma, insert "after affording protestant an opportunity for oral argument."

The committee amendment was agreed to.

The Clerk read as follows:

Page 2, line 17, after "Commission" insert "may in such decision redraft the issues urged by the protestant in accordance with the facts or substantive matters alleged in the protest, and."

Mr. HARRIS. Mr. Chairman, I move to strike out the last word. I do this for the purpose of yielding to the gentleman from Massachusetts, who has a question he would like to ask.

Mr. BOLAND. Mr. Chairman, the encroachment by the large superpower VHF stations and the national networks upon the many locally owned independent UHF stations is a matter of deep concern to those of us who oppose the slow, imperceptible, but nonetheless steady trend toward monopoly in the field of television.

There is little question that a great many UHF stations have been experiencing some real financial and program difficulties. Most of the difficulty stems from the competition and the interference of VHF networks. The protest provision of the Communications Act has been the vehicle by which the UHF stations have been given some measure of protection and the assurance of fair consideration. And this has been particularly so with reference to situations where VHF stations are trying to move transmitters to locations close to locations of existing UHF stations. The overlapping of the service area of stations is another problem that has been met by the protest procedure of the act.

Because of my concern with these and other matters attending the small, individually operated, local television station, I would like to inquire of the Interstate and Foreign Commerce Committee and specifically of the chairman of the subcommittee that studied this matter, the gentleman from Arkansas [Mr. HARRIS], whether, in his opinion, the proposal before us today would in any way constrict the rights of the UHF, small, independent station under the protest procedure section? And, further, what the attitude of this group was in relation to the amendments of whether it voiced any opposition to the recommendations?

Mr. HARRIS. It is our considered opinion that it would not so restrict the rights of the small stations or anyone interested. I might say in relation to these amendments presented here, as was stated previously, that the Federal Communications Bar Association and the Federal Communications Commission after consultation and consideration agreed on them. The one just read and the one previously adopted were the amendments agreed to.

In a letter addressed to me by Mr. Percy H. Russell, Jr., president of the Federal Communications Bar Association, he states:

We feel, as does the Commission, that H. R. 5614 as amended will avoid any serious possibility of the protest procedure being abused in the future while at the same time affording adequate protection to interested persons who have bona fide--

I repeat, "bona fide"--

matters to bring to the Commission's attention.

I think that specifically answers the gentleman's question.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentleman from West Virginia.

Mr. STAGGERS. In regard to this matter of the UHF, in reading this statement of Mr. Cattone, I gathered all through the hearings that he did protest, and he represents the UHF interests. He said if they had never had this protest section, they practically would not have been allowed to operate. He said at one time he was the head of this Federal Bar Association and one of those cooperating with the commission here trying to put them out of business. He said he is not trying to throw any criticism on them, but he did maintain at one time he was president of the Federal Bar Association.

Mr. HARRIS. The gentleman has mentioned Mr. Cattone again. I would like to reply to what the gentleman has said. It is remembered that Mr. Cattone was General Counsel of the Federal Communications Commission for a good many years. In fact, Mr. Cattone, as I recall, was General Counsel of the Federal Communications Commission at the time the McFarland amendments were adopted, and it was the Federal Communications Commission and Mr. Cattone who entered serious protests at that time; their feeling at that time was that this amendment was inadvisable and should not be adopted. They opposed it and did everything they could to prevent this Congress from adopting it. It is a rather strange situation that the same Mr. Cattone, when he is out of Federal service, would, as the gentleman says, indicate that he thinks this provision should be retained. But let me remind the gentleman of this: That Mr. Cattone is a member of the subcommittee of the Federal Communications bar and served on that committee which, after the hearings referred to by the Gentleman from West Virginia, came together with the Federal Communications Commission and agreed on the amendments which we are considering at the present time, saying in effect. "With these amendments we think we will be protected."

Mr. STAGGERS. I made a misstatement there which I would like to correct. He was chairman of the committee on rules of the Federal Bar Association. Further, I would like to ask the gentleman this question: Did anyone who represents a small industry--the radio or television industry--at any time come in and testify as to how this would affect them in any way?

Mr. HARRIS. Of course, the gentleman knows that the members of the Federal Communications Commission bar represent small industry as well as large industry. They represent all segments of the industry.

The CHAIRMAN. The time of the gentleman from Arkansas has expired.

Mr. STAGGERS. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I would like to ask the gentleman this question: If anybody came into protect the public interest as compared to industry?

Mr. HARRIS. Yes; they did.

Mr. STAGGERS. Who was it?

Mr. HARRIS. The representatives of the Federal Communications Bar, certainly has the public interest in mind. The Federal Communications Commission has the public interest in mind, of course. In fact, everyone who comes to the committee asserts that they come as a representative of the public and with the public interest in mind.

Mr. STAGGERS. I would like to answer the gentleman by saying, certainly a group of lawyers who represent some of the networks and the ones already in existence are not going to listen to some of these small complaints come in and say,

"to want to do something that might hurt some of the large networks." The reason this law was originally passed was that FCC did not listen to anybody who came in and made a protest. The Congress passed a law stating that the Federal Communications Commission should listen to people who came in and want a license or want a hearing. After that, the FCC dragged their feet and let the cases pile up. But they come up now and say we do not have enough personnel to have hearings and we cannot have hearings. I believe this is too important--this question of granting radio and television licenses throughout the Nation--for the people of the country not to have a place where they can come in and have a full hearing. That is my opinion and I want to say that I believe, for the public interest and the public welfare, the bill should be defeated.

Mr. SPRINGER. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, if the gentleman from West Virginia, is at all familiar with what has been happening in the Federal Communications Commission and I take it that being on this committee that is a part of his duty, the Commission has been extremely liberal with anybody who is a claimant or a counterclaimant. I have not heard of any complaints from any claimant or counterclaimant who has been down before the Commission that they did not get a hearing. The Commission must give it to him. The question involved here is concerning the protest section, largely, by protestants who in many instances have no genuine interest in the public interest.

I think there is a great deal of confusion in the thinking as to just what this section covers. I hope the gentleman will not get the protest section under discussion now confused with the section on applicants. I have not heard of anybody who has been an applicant or a counterapplicant who has not had a full hearing before the Commission. This section is affecting these pseudo people who have come in for the very purpose of tying up the public interest. I know both gentlemen from West Virginia are interested in the public interest. These people have been working against the public interest in trying to tie a situation up until they can get the settlement they want. That is the way I see this thing. Am I right on that--may I ask our distinguished chairman?

Mr. PRIEST. I think the gentleman has very clearly stated the matter. It is important that the distinction be made. It has been made earlier in the debate. It affects the protest section but it does not affect the applicant for a license. He is not included under this section. I think it is very important that that be understood.

The CHAIRMAN. The question is on the committee amendment.

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: Page 3, line 3, strike out "matters" and insert "facts."

The committee amendment was agreed to.

The Clerk read as follows:

Committee amendment: Page 3, line 3, strike out "specifically."

The committee amendment was agreed to.

The Clerk read as follows:

Committee amendment: Page 3, line 4, after the word "adopted" insert "or specified."

The committee amendment was agreed to.

The Clerk read as follows:

Committee amendment: Page 3, line 4, after the word "Commission," insert "on its own motion."

The committee amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee will rise.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. KILGORE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H. R. 5614) to amend the Communications Act of 1934 in regard to protests of grants of instruments of authorization without hearing, pursuant to House Resolution 300, he reported the same back to the House, with sundry amendments adopted in the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en bloc.

The amendments were agreed to.

The question was taken: and on a division (demanded by Mr. BAILEY) there were--ayes 77, nays 10.

So the bill was passed.

A motion to reconsider was laid on the table.