

NEW PRE-GRANT PROCEDURE

August 12, 1959.—Ordered to be printed

Mr. PASTORE, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 1898]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1898) to amend the Communications Act of 1934 with respect to the procedure in obtaining a license and for rehearings under such act having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

PURPOSE

S. 1898 proposes a substantial revision of section 309 of the Communications Act (47 U.S.C., sec. 309) in order to (1) eliminate the requirement now imposed by section 309(b) that, prior to formal designation of an application for hearing, the Commission shall advise the applicant and other known parties in interest of the grounds and reasons for the Commission's inability to make the finding that a grant would serve the public interest, convenience, or necessity, and (2) substitute for the present post-grant protest procedure of section 309(c) a procedure of pre-grant objection by means of a petition to deny. In accomplishing the above purposes, it has been necessary to introduce new subsections, make editorial changes in some existing subsections, and generally rearrange the order of the various subsections of section 309. Thus, the bill would, in effect, repeal in its entirety the present section 309 and substitute therefor a new section.

GENERAL STATEMENT

This bill was introduced by the chairman of your committee at the request of the Federal Communications Bar Association. Full and complete hearings were held by the Subcommittee on Communications at which all interested parties were afforded an opportunity to present their views.

At present under section 309(c) a heavy burden is placed on the Commission and on successful applicants by requiring unnecessary and lengthy proceedings, after grants are made, to vindicate the grants in situations where there is no substantial basis for attacking them. At the same time the protest procedure fails to give real assurance to protesting parties in interest that legitimate objections to a grant will be given timely and adequate consideration by the Commission.

The original enactment of section 309(c) as a part of the Communications Act Amendments, 1952, developed a feeling of dissatisfaction with the treatment by the Commission of objections to grants. Unfortunately, the existing mandatory protest procedures leave the Commission little discretion to dispense with useless or even frivolous proceedings. While protests must be filed under oath, the factual allegations may be based upon information and belief, which unfortunately encourages the filing of ill-founded protests with allegations based not on known facts, but on suspicion or less. Protest hearings have created immeasurable delays in bringing service to the public, but have resulted in few final reversals of grants. From the protestant's point of view the protest procedure has the fatal drawback that it comes into operation after the Commission has made its determination that a grant is in the public interest. Under the circumstances it has been intimated that it is difficult for a protestant to meet the burden of persuading the Commission that its original grant was mistaken.

EXPLANATION OF BILL BY SECTIONS

Section 309(a) deals with the procedure for pre-grant objections and is based upon the premise that it is more satisfactory that substantial objections to an application be considered before rather than after a grant, as is the case under the present protest procedure. The section is designed to avoid many of the problems which have arisen in connection with the existing procedure and thus lead to the more expeditious handling of applications by decreasing the number of post-grant petitions and, in some cases, eliminating the necessity for recourse to time consuming hearing procedures.

The proposed procedure provided herein for pre-grant objections would not be workable unless objectors were given a reasonable opportunity to make known their objections to the grant of a particular application prior to action thereon by the Commission.

Section 309(a)(1) establishes a new statutory requirement that certain applications for radio authorizations shall not be granted by the Commission earlier than 30 days following issuance of public notice of the acceptance for filing of such applications or any substantial amendment thereof. With specifically enumerated exceptions, this requirement will be applicable to all applications for authorizations provided for in sections 308, 310(b) and 325(b) of the act in the broadcasting and common carrier services and to those types of applications in the safety and special radio services listed in subsection (e). Excepted from the requirement of a waiting period are those types of applications which ordinarily do not generate objections, or as to which because of the temporary nature of the authorization sought any delay in acting thereon would be tantamount to a denial. Some of the exceptions (e.g., minor amendments, and minor changes in the facilities of an authorized station) have not been precisely

defined, but by subsection (f) the Commission is authorized to adopt by rule reasonable classifications of applications and amendments in order to effectuate the purposes of the section.

(g) Section 309(d) would restrict the grant of special temporary authorization to situations where (1) a regular application has been filed and (2) an appropriate finding of emergency has been made by the Commission. However in certain situations and particularly so in the common carrier field, there may be a sudden and immediate need for service, but a need which can not properly be said to be an "emergency", such situations may involve requests for long term service, or for a period of short duration (only a few days). Typical examples of such situations might be: requests for service to a broadcaster for remote pick-ups of special events, inauguration of network service to a new broadcast station or requests for the establishment of service to new and temporary headquarters of the President.

Such situations may necessitate the inauguration of immediate service, prior to the filing of regular applications, or they may represent service requirements which are to begin at once, but which will be of such short duration (a day or week) as to preclude later filing of a regular formal application. It is to amend these situations regarding requests for vital and necessary (but not, strictly speaking, "emergency") service that the proposed language of subsection 309(a)(1)(g) has been added.

Section 309(a)(2) provides that any party in interest¹ may file a petition to deny an application to which the requirement of section 309(a)(1) applies. The petition must be filed prior to the day of Commission action on the application, which can in no case be less than 30 days, or prior to an earlier cutoff date prescribed by Commission rule with respect to a particular classification of applications. The Commission is authorized to prescribe a cutoff date so that, in cases where action on an application would ordinarily be delayed beyond 30 days because of workload conditions, the processing of the application, once begun, may proceed without interruption due to a late filed petition to deny. The cutoff date must, therefore, be reasonably related to the time when the type of application would normally be reached for processing.

With respect to the content of the petition to deny, section 309(a)(2) requires that the petition contain specific allegations of evidentiary facts sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with revised subsection (b) (present subsection (a)), and that such allegations of fact shall, except for those of which official notice may be taken, be supported by the affidavit of a person or persons with personal knowledge thereof. Thus, a petitioner must make a substantially stronger showing of greater probative value than is now necessary in the case of a post-grant protest. The allegation of ultimate, conclusionary facts or mere general allegations on information and belief, supported by generalized affidavits, as is now possible with protests, are not sufficient. Inasmuch as any allegations of fact or denials in a reply by an applicant must similarly be supported by affidavits, the Commission will have available to it a record upon which it can rely in its consideration of the application and petition.

¹ Although the right to file a petition to deny is limited to a "party in interest," it is not intended to deprive any person of the privilege of filing informal objections to the grant of any authorization.

In considering a petition to deny, the Commission should be guided by rules applicable to a motion for summary judgment rather than, as under the present protest procedure, to a demurrer. If, after consideration of the application, the petition and reply, and other matters which it may officially notice, the Commission finds that there are no substantial and material questions of fact and that a grant would be consistent with the public interest, it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition. The Commission would not be required to write an opinion in support of the grant as in a hearing case, but would be required to dispose of each substantial question presented by the petition, so that the petitioner would have an adequate opportunity to urge error on appellate review. On the other hand, if the petition to deny presents a substantial and material question of fact, or if the Commission for any other reason is unable to find that a grant of the application would be consistent with the public interest, it shall formally designate the application for hearing as provided in section 309(c).

Section 309(b) is substantially the same as existing section 309(a), with additions to take into account the new procedure for a petition to deny.

Section 309(c) is the same as present section 309(b) with the following exceptions: (1) editorial changes to take into account the new procedure for petition to deny; (2) the elimination of the requirement that the Commission must in all cases notify the applicant of all objections to the application before formal designation for hearing, and the substitution of a provision that such notice must be given only when the Commission in its discretion finds that action on the application will be expedited thereby; and (3) a grant of discretion to the Commission in the assignment of the burden of proceeding with the introduction of evidence and the burden of proof upon issues presented by a petition to deny or a petition to enforce. By far the most important feature of this subsection is the elimination of the requirement for issuance of a prehearing notice in every case in which the application could not be granted without hearing. That requirement has proven to be the principal reason for the increasing backlogs in the Commission's workload.

Section 309(d) provides a safety valve to protect the public interest in those rare cases in which the Commission finds that the delay required by subsection 309(a)(1) would seriously prejudice the public interest. Notwithstanding the requirements of subsection (a), when there are extraordinary circumstances requiring emergency operations in the public interest, the Commission may grant a temporary authorization, accompanied by a statement of its reasons, to permit emergency operation for a period not exceeding 90 days. Upon the making of similar findings the temporary authorization may be extended for one additional period of 90 days, but no longer. During such period of 180 days, it is anticipated that either the emergency will have subsided or the Commission will have been able to complete its consideration of the application and any petition to deny, as required by subsection (a), and a regular authorization issued.

Section 309(e) lists the types of applications in the safety and special services which are subject to the requirements of subsection (a). These applications are those in which, because of competitive factors, substantial objections may likely be filed. The section also authorizes

the Commission by rule to include other classes of stations among those subject to the requirements of subsection (a).

Section 309(f) authorizes the Commission to adopt by rule reasonable classifications of applications and amendments in order to effectuate the purposes of the section, especially subsection (a).

Section 309(g) is the same as present section 309(d).

Section 2 of the bill makes editorial changes in section 319(c) of the Communications Act of 1934 (47 U.S.C., sec. 319(c)) to take into account the amendments to section 309.

Section 3 of the bill proposes to amend section 405 of the Communications Act of 1934 (47 U.S.C., sec. 405—Rehearings before Commission) in three respects: (1) the correction of an obvious typographical error in the first sentence of section 405 which inadvertently was inserted during the enactment of the 1952 amendments; (2) the addition of a specific requirement that the Commission shall enter an order, with a concise statement of the reasons, denying or granting a petition for rehearing in whole or in part; and (3) the addition of the requirement that the Commission shall act upon a petition for rehearing or reconsideration of a grant without hearing within 90 days of the filing of such petition.

AGENCY COMMENTS

Letter from Federal Communications Commission dated July 22, 1959, letter from Federal Communications Commission dated July 27, 1959, letter from Comptroller General of the United States dated May 15, 1959, letter from Federal Communications Bar Association dated July 22, 1959, letter from Federal Communications Bar Association dated July 28, 1959, as set forth below:

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., July 22, 1959.

HON. JOHN O. PASTORE,
Chairman, Communications Subcommittee, Interstate and Foreign Commerce Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR PASTORE: You will recall that on June 11, 1959, at hearings before your subcommittee on S. 1733 (a bill introduced at the request of the Commission to dispense with the requirement of section 309(b) of the Communications Act for a prehearing notice to applicants) and S. 1898 (a bill introduced at the request of the Federal Communications Bar Association, designed primarily to substitute a procedure of pre-grant objections for the present protest procedure established by section 309(c) of the act), there was a substantial area of disagreement between representatives of the Commission and the FCBA, and that it was agreed that an attempt would be made to reconcile the differences. Since that time representatives of the Commission and the FCBA have conferred at length, with the result that we are able to submit for the consideration of your subcommittee the attached draft of legislation which is acceptable to both the Commission and the FCBA, and which, we believe, will strike a more even balance between the expedition of the Commission's work and the protection of the rights of licensees and applicants.

Since the attached draft is in substance an amendment of S. 1898, it is appropriate that we point out the major differences between S. 1898 and the new proposal.

Section 309(a)(1) is the same as the corresponding section of S. 1898¹ with the following additions:

1. Changes in clause (E) to make it clear that auxiliary facilities similar to remote pickups and studio links are also exempt from the requirement of the section, and that the exemption will also be applicable when such auxiliary services are furnished to a broadcast station by a common carrier.

2. A new clause (F) is added to provide that the requirement for a 30-day delay shall not be applicable to authorizations pursuant to section 325(b) of the act (transmission of program material to foreign stations) when the programs to be transmitted are special events not of a continuing nature, such as the Queen's visit to Chicago, the dedication of the St. Lawrence Seaway, etc. Any delay in acting upon requests for authority to transmit such programs, which generally arise on short notice, would be tantamount to a denial of such request.

Section 309(a)(2) is substantially the same as the corresponding section of S. 1898 with the addition of a proviso that would grant to the Commission authority to establish cutoff dates for the filing of petitions to deny. Such cutoff date with respect to a particular classification of applications must be reasonably related to the time such applications would normally be reached for processing. For example, if the backlog of standard broadcast applications is such that an application would not be reached for processing until it had been on file for 7 months, the Commission could reasonably provide by rule that a petition to deny such application must be on file within 6 months after the application is filed or substantially amended. Such a rule would afford interested parties ample opportunity to prepare and file a petition to deny, and would at the same time permit the Commission's staff to proceed with the processing of the application without interruption due to a late filed petition.

The provision in section 309(a)(2) of both the attached draft S. 1898, requiring that allegations of fact must be supported by the affidavit of a person with personal knowledge, represents a substantial improvement over the present protest procedure. This, together with the requirement for "specific allegations of fact," which we understand to mean "evidentiary" rather than "ultimate" facts, will be of great assistance in meeting the problems engendered by the present section 309(c).

Section 309(c) of the attached draft represents a compromise between the provisions of S. 1733 and S. 1898. It eliminates the requirement that a prehearing notice be given to applicants in all cases as now required by existing section 309(b), and leaves it to the Commission's discretion to give such notice when it appears that action on the application might be expedited thereby.

Section 309(d) of the attached draft also represents a compromise under which in unusual circumstances the Commission, whether or not a petition to deny has been filed, may grant a temporary authorization even though the application has not been on file the required 30 days. In view of the findings necessary for invoking this section, it is anticipated that it will be rarely used. However, it is felt that it does provide the Commission with flexibility to take care of emergency situations where any delay would prejudice the public interest, and at the same time would reserve final action on the application until after the objections are disposed of.

It is our understanding that the Federal Communications Bar Association will indicate to you its acceptance of the attached draft and also its withdrawal of objections to the enactment of S. 1738, a bill introduced at the request of the Commission to enlarge upon the functions of its review staff (sec. 5(c) of the Act). The Commission urges that your subcommittee consider the attached draft and S. 1738 at its earliest convenience to the end that they may be enacted into law at this session of Congress if at all possible.

Commissioners Bartley, Ford, and myself are still of the opinion that section 5(c) should be repealed. I join with them in expressing the preference that section 309 of the act be amended to eliminate from section 309(b) any reference to a prehearing notice and to repeal section 309(c) without providing a new statutory substitute. However, in the interests of avoiding controversy and obtaining relief as soon as possible from some of the restrictions imposed by section 5(c) and the burdens of section 309, we concur with the other Commissioners in urging enactment of S. 1738 and the attached draft.

JOHN C. DOERFER, *Chairman*
(By direction of the Commission).

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, May 15, 1959.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of May 12, 1959, requests our views on S. 1898, 86th Congress, a bill to amend the Communications Act of 1934 with respect to the procedure in obtaining a license and hearings under the act.

We have no comments to offer as the subject matter of the bill does not involve a function of our Office and we have no special information as to the need for or desirability of the proposed legislation.

This report is submitted in triplicate, as requested.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

FEDERAL COMMUNICATIONS BAR ASSOCIATION,
Washington, D.C., July 28, 1959.

HON. JOHN O. PASTORE,
Chairman, Communications Subcommittee, Interstate and Foreign Commerce Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR PASTORE: By letter of July 27, 1959, Chairman John C. Doerfer has requested on behalf of the Federal Communications Commission a further modification of S. 1898 in the form in which the bill was transmitted to you under cover of the Chairman's letter of July 22, 1959. This further modification would add a new subclause to the proviso clause of section 309(a)(1) which would permit the Commission to issue a special temporary authorization for nonbroadcast operation for a single period of not more than 30

days where no application for regular operation is contemplated or pending the filing of such an application.

As in the case of the other proposed modifications of S. 1898 submitted to you on July 22, 1959, the Federal Communications Bar Association has worked closely with the Federal Communications Commission on this proposed revision and we support the request of the Federal Communications Commission that such modification be made.

Respectfully submitted.

LEONARD H. MARKS, *President.*

FEDERAL COMMUNICATIONS BAR ASSOCIATION,
Washington, D.C., July 22, 1959.

HON. JOHN O. PASTORE,
*Chairman, Communications Subcommittee,
Interstate and Foreign Commerce Committee,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: On behalf of the Federal Communications Bar Association, I am pleased to report that, pursuant to your suggestion at the June 11, 1959 hearings on S. 1733 and S. 1898, representatives of the Federal Communications Commission and representatives of the association have met on several occasions in an effort to resolve their differences with respect to these bills and S. 1738, and that the results of these meetings have been extremely fruitful.

As a result of the discussions the association has agreed to withdraw its opposition to S. 1738 in the interest of assisting the Commission in expediting its processes. The Commission and the association have also agreed to certain proposed revisions of S. 1898 which embody compromise language as to the pre-grant provisions of that bill. Since S. 1898 includes a comprehensive revision of section 309 as a whole, there is included in the revised bill compromise language with respect to the prehearing notice now provided in section 309(b) which was the subject of a separate bill (S. 1733).

The association has read Chairman Doerfer's letter to you dated July 22, 1959, which summarizes the agreed changes in S. 1898 and we believe the summary to be both fair and accurate. We desire, however, to make a few additional comments.

It is noted that three members of the Commission would prefer outright repeal of section 309(c) as it now stands without substitution of a pre-grant procedure, but have joined the majority in urging enactment of the compromise proposal. The association appreciates the spirit of cooperation involved. We wish the subcommittee to be aware that there are some members of the association who will be dubious about the desirability of the modifications made in this bill for the opposite reason—the fear that, as modified, the bill may fail to provide adequate procedural safeguards. Along with the Commission, however, we are persuaded that the revised S. 1898 upon which agreement has been reached represents a pronounced improvement over existing procedures, that it represents a reasonable compromise, and that its speedy enactment would be in the public interest.

In our view, the three most significant changes in S. 1898 to which we have agreed are (1) to eliminate the mandatory prehearing notice, (2) to give the Commission power to establish a reasonable cutoff date

for the filing of petitions to deny applications and (3) to give the Commission power to issue, in real and unusual emergencies, temporary authorizations not subject to the pre-grant procedure. As to (1), many members of the association have felt that the present pre-hearing notice serves a useful purpose as we previously testified before you. However, because the Commission has found the procedure productive of much delay, we have agreed to support deletion of the mandatory requirement and the Commission has agreed to a provision to the effect that in the interest of expediting the determination of applications, a notice will be sent to interested parties where the Commission finds that giving such a notice may expedite action on an application. As to (2), the association is satisfied that the Commission will have no difficulty in administering the cutoff provisions and the example stated in the sixth paragraph of the Commission's letter reflects, we believe, a proper interpretation of the provision.

In considering these changes, the association was more concerned about the emergency authorization provision ((3) above) because of fear that it might be invoked as a device for short-circuiting regular procedures. The association has agreed to the provision only because it is satisfied that the letter and spirit of the language in which it is framed will preclude use of the authority granted for a preliminary authorization merely because the proposed service or operation could be found to be a needed and desirable one and the protection the Communications Act would normally afford to the rights of other parties would delay an authorization made in the usual manner. As we understand it, the Commission intends to use the authority granted only in the most unusual and true emergency situations where there are compelling reasons requiring the conclusion that delay in Commission action itself will work an extraordinary hardship which would seriously prejudice the public interest. It is difficult to draft statutory language to delineate the limits on the use of the proposed section 309(d) because of the difficulty in anticipating situations that might arise in the future. However, in the light of the discussions between the Commission's representatives and the representatives of the association in working out this compromise, the statement in the Commission's letter of July 22, 1959 that this provision "will be rarely used," taken together with the language of Section 309(d), seems to us to make clear the very limited application of the proposed section 309(d).

Under the circumstances, the Federal Communications Bar Association strongly supports enactment of S. 1738, and the enactment of S. 1898 with the amendments suggested in the letter from Chairman Doerfer to you dated July 22, 1959.

Very truly yours,

LEONARD H. MARKS, *President.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., July 27, 1959.

HON. JOHN O. PASTORE,
*Chairman, Communications Subcommittee, Interstate and Foreign
Commerce Committee, U.S. Senate, Washington, D.C.*

DEAR SENATOR PASTORE: Under date of July 22, 1959, I transmitted 30 copies of a proposed revision of S. 1898 which was approved

by the Federal Communications Commission July 17, 1959. I have advised that the Federal Communications Bar Association has also written to your committee in support of this proposal. In our efforts to achieve a proposal which could be supported by both the bar association and the Commission, we overlooked a problem which might arise in the nonbroadcast services. To remedy that problem, we request that the proposed revision of S. 1898 be modified as follows:

Insert in the proviso clause of section 309(a)(1) between the lettered subclauses (F) and (G) a new subclause to read as follows: "(G) Special temporary authorization for nonbroadcast operation not to exceed 30 days where no application for regular operation is contemplated to be filed or pending the filing of an application for such regular operation."

Change the designation letter of present subclause (G) to (H).

These changes will eliminate what otherwise might become a serious administrative problem for the Commission. I have been advised that the bar association will support this modification.

Sincerely yours,

JOHN C. DOERFER, *Chairman.*

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 are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934, AS AMENDED

ACTION UPON APPLICATIONS: FORM OF AND CONDITIONS ATTACHED TO LICENSES

SEC. 309. [(a) If upon examination of any application provided for in section 308 the Commission shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.] (a)(1) *No application provided for in sections 308, 310(b), and 325(b) for an instrument of authorization or any station in the broadcasting or common carrier services or for any station within the scope of subsection (e) shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof: Provided, That this requirement shall not apply to any minor amendment of any such application or to any application for (A) minor change in the facilities of an authorized station, (B) consent to an involuntary assignment or transfer under section 310(b) or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control, (C) license under section 319(c) or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license, (D) extension of time to complete construction of authorized facilities, (E) authorization of facilities for remote pickups, studio links and similar facilities for use in the operation of a broadcast station, or (F) authorizations pursuant to section*

325(b) where the programs to be transmitted are special events not of a continuing nature or, (G) special temporary authorization for nonbroadcast operation not to exceed 30 days where no application for regular operation is contemplated to be filed or pending the filing of an application for such regular operation or (H) authorization under any of the proviso clauses of section 308(a).

(2) Any party in interest may file a petition to deny any application or amendment thereof to which the requirement of paragraph (1) of this subsection applies at any time prior to the day of Commission grant thereof without hearing or formal designation thereof for hearing: Provided, That, with respect to any classification of applications, the Commission from time to time by rule may specify a shorter period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. Such petition shall be served on the applicant and shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant thereof would be prima facie inconsistent with subsection (b). Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit. If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (b), it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition which shall dispose of each substantial question presented thereby. If a substantial and material question of fact is presented or if the Commission for any other reason is unable to find that grant of the application would be consistent with subsection (b), it shall proceed as provided in subsection (c).

(b) Whether or not a petition to deny is filed under subsection (a), the Commission shall examine each application provided for in section 308. If upon examination of any such application provided for in section 308 and upon consideration of any such petition and any reply thereto or such other matters as the Commission may officially notice the Commission shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

[(b) If upon examination of any such application the Commission is unable to make the finding specified in subsection (a), it shall forthwith notify the applicant and other known parties in interest of the grounds and reasons for its inability to make such finding. Such notice, which shall precede formal designation for a hearing, shall advise the applicant and all other known parties in interest of all objections made to the application as well as the source and nature of such objections. Following such notice, the applicant shall be given an opportunity to reply. If the Commission, after considering such reply, shall be unable to make the finding specified in subsection (a), it shall formally designate the application for hearing on the grounds or reasons then obtaining and shall notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things

in issue but not including issues or requirements phrased generally. The parties in interest, if any, who are not notified by the Commission of its action with respect to a particular application may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission, as well as the burden of proof upon all such issues, shall be upon the applicant.]

[(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 thirty days. During such thirty-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 the 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 thirty 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 to which the Commission, after affording protestant an opportunity for oral argument, finds, for reasons set forth in the decision, that, even if the facts alleged were to be proven, no grounds for setting aside the grant are presented. The Commission may in such decision redress the issues urged by the protestant in accordance with the facts and substantive matters alleged in the protest, and may also specify in such decision that the application be set for hearing upon such further issues 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 facts set forth in the protest and not adopted or specified by the Commission, on its own motion, 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 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.]

[(d) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject: (1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; (2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act; (3) every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof.]

(c) *If upon examination of any such application, petition to deny or reply thereto or such other matters as the Commission may officially notice the Commission is unable to make the finding specified in subsection (b), it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally: Provided, That, if the Commission finds that by first giving the applicant and other known parties in interest notice of all objections to such application and an opportunity to reply thereto a determination of the application may be expedited, it shall forthwith give such notice and opportunity for reply before formally designating the application for hearing. The parties in interest, if any, who are not notified by the Commission of its action with respect to a particular application, may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.*

(d) *When an application subject to subsection (a) has been filed, the Commission, notwithstanding the requirements thereof, may, if otherwise authorized by law and if it finds that there are extraordinary circumstances requiring emergency operations in the public interest and that delay in the institution of such emergency operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such emergency operations for a period not exceeding ninety days, and upon making like findings may extend such temporary authorization for one additional period not to exceed ninety days. When any such grant is made, the Commission shall give expeditious treatment to any timely filed petition to deny such application and to any petition for rehearing of such grant filed under section 405.*

(e) *The stations other than in the broadcasting or common carrier service referred to in subsection (a) are (1) fixed point-to-point microwave stations, but not including control and relay stations used as integral parts of mobile radio systems, (2) industrial radio positioning stations for which frequencies are assigned on an exclusive basis, (3) aeronautical en route stations, (4) aeronautical advisory stations, (5) airdrome control*

stations, (6) aeronautical fixed stations, and (7) such other stations, classes of stations as the Commission by rule provides.

(f) The Commission is authorized to adopt by rule reasonable classifications of applications and amendments in order to effectuate the purposes of this section.

(g) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject: (1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; (2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act; (3) every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof.

CONSTRUCTION PERMITS

SEC. 319. (a) * * *

(b) * * *

(c) Upon the completion * * *. The provisions of section 309 (a), (b), [and (c)] (c), (d), and (e) shall not apply with respect to any station license the issuance of which is provided for and governed by the provisions of this subsection.

REHEARINGS BEFORE COMMISSION

SEC. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, [and party] any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for rehearing; and it shall be lawful for the Commission, in its discretion, to grant such a rehearing if sufficient reason therefor be made to appear. * * *

The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such decision, order, or requirement, except where the party seeking such review (1) was not a party to the proceedings resulting in such decision, order, or requirement, or (2) relies on questions of fact or law upon which the Commission has been afforded no opportunity to pass. The Commission shall enter an order with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate: Provided, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission shall take such action within ninety days of the filing of such petition. * * *