

COMMUNICATIONS ACT AMENDMENTS, 1960

August 19, 1960.—Ordered to be printed

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

R E P O R T

[To accompany S. 1898]

The Committee on Interstate and Foreign Commerce, to whom were referred the amendments of the House to 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 Senate agree to the amendments of the House with the following amendments:

AMENDMENTS

On page 14 of the House engrossed amendments, line 4, strike out "SUSPENSION, REVOCATION," and insert "REVOCATION".

On page 14 of the House engrossed amendments, line 6, strike out "(a) Section" and insert "Subsections (a) and (b) of section", and in line 7 strike out "is" and insert "are".

On page 14 of the House engrossed amendments, line 23, after "any" insert "final".

On page 15 of the House engrossed amendments, after the period in line 10, insert quotation marks, and beginning with line 11 strike out the remainder of such page and all of pages 16 and 17.

On page 18 of the House engrossed amendments, beginning with line 8, strike out the remainder of such page and in lieu thereof insert the following:

(b)(1) Any licensee or permittee of a broadcast station
who—

(A) willfully or repeatedly fails to operate such station
substantially as set forth in his license or permit,

(B) willfully or repeatedly fails to observe any of the
provisions of this Act or of any rule or regulation of the

Commission prescribed under authority of this Act or under authority of any treaty ratified by the United States,

(C) fails to observe any final cease and desist order issued by the Commission,

(D) violates Section 317(c) or Section 509(a)(4) of this Act, or

(E) violates section 1304, 1343, or 1464 of title 18 of the United States Code, shall forfeit to the United States a sum not to exceed \$1,000. Each day during which such violation occurs shall constitute a separate offense. Such forfeiture shall be in addition to any other penalty provided by this Act.

(2) No forfeiture liability under paragraph (1) of this subsection (b) shall attach unless a written notice of apparent liability shall have been issued by the Commission and such notice has been received by the licensee or permittee or the Commission shall have sent such notice by registered or certified mail to the last known address of the licensee or permittee. A licensee or permittee so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulations prescribe, why he should not be held liable. A notice issued under this paragraph shall not be valid unless it sets forth the date, facts, and nature of the act or omission with which the licensee or permittee is charged and specifically identifies the particular provision or provisions of the law, rule, or regulation or the license, permit, or cease and desist order involved.

(3) No forfeiture liability under paragraph (1) of this subsection (b) shall attach for any violation occurring more than one year prior to the date of issuance of the notice of apparent liability and in no event shall the forfeiture imposed for the acts or omissions set forth in any notice of apparent liability exceed \$10,000.

(b) Section 504(a) of the Communications Act of 1934 (47 U.S.C. 504) is amended by inserting after "*Provided,*" in the first sentence thereof the following:

That any suit for the recovery of a forfeiture imposed pursuant to the provisions of this Act shall be a trial de novo: *Provided further,*

(c) Section 504(b) of such Act is amended by striking out "section 507" and inserting in lieu thereof "sections 503(b) and 507".

(d) Section 504 of such Act is further amended by adding a new subsection to read as follows:

(c) In any case where the Commission issues a notice of apparent liability looking toward the imposition of a forfeiture under this Act, that fact shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdic-

tion has ordered payment of such forfeiture, and such order has become final.

On page 22 of the House engrossed amendments, line 12, beginning with "The", strike out all through "section." in line 14 and in lieu thereof insert the following:

(e) The inclusion in the program of the announcement required by section 317 shall constitute the disclosure required by this section.

On page 22 of the House engrossed amendments, line 15, strike out "(e)" and insert "(f)".

On page 22 of the House engrossed amendments, line 25, strike out "(f)" and insert "(g)".

Amend the title so as to read:

An Act to promote the public interest by amending the Communications Act of 1934, to provide a pre-grant procedure in case of certain applications; to impose limitations on payoffs between applicants; to require disclosure of payments made for the broadcasting of certain matter; to grant authority to impose forfeitures in the broadcast service; and to prohibit deceptive practices in contests of intellectual knowledge, skill, or chance; and for other purposes.

GENERAL STATEMENT

S. 1898 was originally introduced by the chairman of your committee at the request of the Federal Communications Bar Association. After full hearings S. 1898 was reported favorably and passed by the Senate on August 19, 1959. As it passed the Senate the bill was limited to a revision of section 309 of the Communications Act of 1934, as amended (47 U.S.C. 309). It would have modified (1) the requirement now imposed by section 309 that prior to a formal designation of an application for hearing the Commission would advise the applicant and 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, and necessity; and (2) substituted for the present postgrant protest procedure of section 309(c) a procedure of pregrant objection by means of a petition to deny.

With the exception of the so-called pregrant provisions the House amended S. 1898 by incorporating therein a number of substantial amendments for the purpose of carrying out the recommendations made by the Special Subcommittee on Legislative Oversight, and other proposals originally introduced in the House of Representatives by the Honorable Oren Harris, chairman of the House Interstate and Foreign Commerce Committee. The House of Representatives passed S. 1898 with amendments on June 28, 1960. Generally, the provisions of the House-amended bill would provide the following:

Section 1 would provide a short title for the bill.

Section 2 would repeal that portion of section 4(b) of the Communications Act which permits commissioners to accept reasonable honorariums or compensation for the presentation or delivery of papers. The 1952 Communications Act Amendments relaxed the prohibition against commissioners engaging in any other business, vocation, profession, or employment by providing that this prohibition

should not apply to the presentation or delivery of publications or papers for which a reasonable honorarium or compensation may be accepted (47 U.S.C. 154(b)). Section 2 would in effect repeal this special provision. The remaining language of section 4(b) of the Communications Act would make uniform among the regulatory agencies a similar prohibition against commissioners engaging in any other business, vocation, profession, or employment.

Section 3 would amend section 307 of the Communications Act to make clear that the Commission can and, on appropriate occasions, should issue broadcast station licenses for terms shorter than 3 years. The present section 307(d) of the act provides:

“* * * Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses, and not to exceed five years in the case of other licenses * * *”

While this language has always been construed as giving the Commission discretion to issue broadcast licenses for a term of less than 3 years, this has often been done; at the present time broadcast licenses are issued for a 3-year period and the rules so provide. The FCC has already proposed to modify these rules to make it clear that the Commission may in appropriate cases issue licenses for shorter terms and a notice of proposed rulemaking to that end is now outstanding.

Section 4 deals with section 309 of the Communications Act and is identical to the substance of S. 1898 as passed by the Senate August 19, 1959.

Section 5 would amend section 311 of the Communications Act to require applicants for most instruments of authorization in the broadcasting service to give notice of the filing of their applications, and, if any such application is designated for hearing, to give notice of such hearing. Each such notice would be given in the principal area which is served or is to be served by the broadcast station with respect to which such application is filed. The Commission would prescribe by rule the form and content of such notices and the manner and frequency with which they are given. The amendment would also authorize the Commission to hold hearings at a place in, or in the vicinity of, the principal area to be served by the station involved in such hearing if the Commission determines that the public interest, convenience, or necessity would be served by conducting such local hearing.

This section also deals with the problem of “payoffs” or compromise of applications. This section would make it unlawful, without approval of the Commission, in any case where two or more applications for a construction permit for a broadcasting station are pending and only one application can be granted, for the applicants to effectuate an agreement whereby one or more such applicants withdraws his or their application or applications. The agreeing parties would be required to submit to the Commission full information with respect to the agreement which would have to be set forth in such detail, form, and manner as the Commission shall by rule require.

The Commission may approve such agreement only if it determines that it is consistent with the public interest, convenience or necessity.

If the agreement does not contemplate a merger, but contemplates the making of any direct or indirect payment to any party thereto in consideration of his withdrawal of his application, the Commission may determine the agreement to be consistent with the public interest, convenience or necessity only if the amount or value of such payment, as determined by the Commission, is not in excess of the aggregate amount determined by the Commission to have been or to be legitimately and prudently expended in connection with the prosecution of such application.

Section 6 of S. 1898, amending section 312 of the Communications Act, "ADMINISTRATIVE SANCTIONS", would authorize the Commission to suspend station licenses for a period not in excess of 10 days on grounds similar to those on which the Commission is now authorized to revoke a license.

Section 7, amending section 503 of the Communications Act, would authorize the Commission to impose forfeitures on licensees or permittees of broadcast stations of not to exceed \$1,000 a day for certain violations. Such forfeiture shall be in addition to any other penalty provided by the act. The forfeitures may be remitted or mitigated by the Commission upon application of the licensee.

Section 8(a) rewrites section 317 of the Communications Act of 1934 which requires announcements to be made with respect to certain matter which is broadcast.

Section 8(b) amends title V of the act by adding a new section 508 at the end thereof. Such section 508 would require the disclosure of certain payments made to persons other than station licensees for the broadcasting of matter. Such disclosure is required in order that announcements may be made as provided in section 8(a).

The proposed section 317(a)(1) down to the proviso is substantially the same as the present section 317. The proviso reads:

Provided, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

The words "beyond an identification which is reasonably related to the use of such service or property on the broadcast" might raise the problem as to the permissible degree of identification without the necessity of an announcement. However the House Interstate and Foreign Commerce Committee report incorporated pertinent portions of commentary and specific guidelines which are of considerable assistance in determining the meaning of this language.

Subsection (a)(2) of proposed section 317 would permit the Commission to continue in existence its rule regarding political programs or controversial issues.

Subsection (b) of the proposed section 317 relates to the companion disclosure provision and would require an announcement of sponsorship where consideration within the disclosure statute was received by persons other than the licensee of the station.

Section (c) of the proposed section 317 would require a station licensee to exercise reasonable diligence to obtain from its employees and from other persons with whom it deals information to enable the licensee to make appropriate announcement of sponsorship. The term "reasonable diligence" would require the licensee to take appropriate steps to secure such information, but it would not place a licensee in the position of being an insurer, nor does this condition permit a licensee to escape responsibility for sponsorship announcements by inactivity on his part.

Subsection (d) of the proposed section 317 would provide that the Commission may waive the requirement of an announcement where the public interest, convenience, or necessity does not require an announcement.

Section (e) of the proposed section 317 would grant the Commission power to prescribe appropriate rules and regulations with reference to this section.

Section 8(b) would amend title V of the Communications Act of 1934 to require the disclosure to the broadcast station licensee of payments made to persons other than the licensee of such station for the broadcasting of any matter by such stations. A person who violates this proposed section would be subject to criminal penalties.

Section 9 of S. 1898 would add a new section 509 of title V of the Communications Act which would prohibit certain practices in case of contests of intellectual knowledge, or intellectual skill. It is intended to curb the broadcast of deceptive contests or fixed quiz shows.

While the Commission has regulatory authority with respect to interstate and foreign radio broadcasting, the jurisdiction of the Commission over deceptive broadcast practices does not extend beyond its broadcast licensees and the Commission cannot reach networks directly or advertisers, producers, sponsors, and others who in one capacity or another are associated with the presentation of a radio or television program which may deceive the listening or viewing public. The Commission has issued a notice of proposed rulemaking (Docket 13390) to amend its rules to curb deceptive practices in quiz programs and other contests of intellectual skill or knowledge by imposing certain requirements on its broadcast licensees with reference to such programs.

Section 9 would help to assure that every contest of intellectual skill or knowledge that is broadcast will be, in fact, a bona fide contest. The existing statutory authority of the Commission in this area is ineffective in reaching beyond the broadcast licensee, who in many instances may be hundreds or even thousands of miles away from the origination of the program and may have no knowledge of the deceptive nature of the the program or the means to acquire it. It would penalize those persons responsible in any way for the broadcast of a deceptive program of the type provided.

It is obvious after a careful reading of S. 1898 as amended, that in the main the House amendments are of a constructive and desirable nature and should be adopted. They represent a thoughtful and considered legislative structure designed to deal affirmatively with the difficult problems revealed by the House Legislative Oversight Subcommittee. The adoption of the legislation would serve the public interest in providing for more efficient, expeditious, and affirmative

procedures by the Federal Communications Commission. It would clarify the existing statutory provisions upon which the Commission should be given guidance and at the same time afford protection to the public and the broadcasting industry from wrongdoing as revealed during the past year in the television quiz shows and payola practices.

Shortly after the passage of S. 1898 by the House, this committee was deluged with calls, correspondence, and statements expressing concern and opposition with respect to the suspension and forfeiture provisions of the legislation. Following careful deliberations, your committee voted to request that the bill be referred to the committee in order to hold hearings so that the controversial phases could be explored. A full and complete hearing was held. Witnesses representing every phase of the industry and public were afforded the opportunity to present their views. Numerous statements, letters, telegrams, and other communications were received and considered by the committee. Informal conferences were held with various experts in this field in order that the committee would have the best advice available. The amendments herein recommended represent the best judgment of all these parties. The amendments herein recommended involve only the suspension and forfeiture provisions. They represent a constructive approach to a complicated but significant part of the Commission's responsibility in the broadcast field. The reasons and need for the other provisions of the bill adopted by the House of Representatives are set forth in detail in House of Representatives Report No. 1800, 86th Congress, 2d session. The amendments recommended by your committee are discussed more fully below.

SUSPENSIONS

At present the FCC's authority to enforce the Communications Act and other related statutes and its rules and regulations are four in number with revocation of a license or permit the most severe penalty. The four sanctions authorized under existing statute are as follows:

1. Revocation of license, section 312 of the Communications Act;
2. Issuance of cease and desist orders, section 312 of the act; enforcement of cease and desist orders either through revocation or through court order (sec. 401(b) of the act) for violation of which contempt penalties may be imposed by a court;
3. The criminal penalties of fine or imprisonment, or both, for willfully and knowingly doing anything prohibited by the act, or for will fully or knowingly failing to do a thing required by the act (sec. 501 of the act); and
4. The criminal penalty of a fine of not more than \$500 for each and every day during which any person willfully or knowingly violates any rule, regulation, restriction or condition made or imposed by the Commission under the act (sec. 502 of the act).

The obvious purpose for giving the FCC the authority to suspend a license appears to be an effort to provide the Commission with a remedy less drastic than the so-called death sentence—revocation or failure to renew.

In authorizing the FCC to invoke its suspension powers against a broadcaster, careful account must be taken of the effect such action would have on the community served by such a broadcaster. It is obvious that if a broadcaster is required to suspend operation for a

specific period of time such a suspension would impose a hardship on the broadcaster and result in the loss of revenue during the period in which he is off the air. Essentially then suspension can be considered an economic penalty. Yet if a broadcaster were required to suspend service his economic loss would only be part of the penalty; the public would also suffer through the loss of the programming service of the offending station.

For example, if the bill was law, broadcast of an illegal lottery might result in suspension thereby closing down the broadcaster. All other programs of the station about which no question had been raised would go off the air. What if this is the only broadcast the public and the community could receive? What would happen if a hurricane or tornado warning became necessary during that period of broadcasting silence?

The same result, however, your committee believes, could be achieved through the use of forfeitures. The imposition of a forfeiture would cause the broadcaster economic injury since he would be forced to pay a monetary penalty for his conduct. Here the burden would fall directly and entirely on the offending broadcaster and not on the public. Your committee is concerned about the service that is made available to the public and it is desirous of taking no action that may adversely affect such service. Your committee is mindful of the fact that 8 years ago the Congress provided the Commission with a remedy additional to the original remedy of revocation and criminal sanctions when it incorporated the cease-and-desist procedures in the Communications Act. In the conference report on the 1952 amendments to the act it was stated that the authority to issue cease-and-desist orders would give the Commission a means by which it could secure compliance by the licensee with the provisions of the act and with the regulations thereunder.

The cease and desist power, however, appears to have been little utilized by the Commission. Indeed until this very year it does not appear to have been utilized by the Commission in the broadcasting field. Yet your committee in its report in 1952 noted the cease-and-desist procedure is a successful one in many administrative agencies. It appears, therefore, that it would be unwise to add the suspension power at this time, particularly because of its impact on the general public, when there is no showing that the cease-and-desist power has not worked. Your committee is still of the opinion that this can be utilized very effectively.

We feel that the sanctions now available in the Communications Act, plus the forfeiture penalties herein being provided, give the Commission adequate tools to take effective action against offending licensees without the adverse results that flow from a temporary suspension of a broadcasting facility. Experience may prove that cease-and-desist action and monetary penalties are not sufficient. If it does, then this committee will act quickly to remedy the situation.

FORFEITURES

Section 7 of the bill as passed by the House would amend section 503 of the Communications Act of 1934 by adding thereto a new subsection (b) to give to the Federal Communications Commission the authority to impose a forfeiture on the licensee or permittee of

a broadcast station of up to \$1,000 a day for violations of the Act or the rules and regulations of the Commission, or treaty or cease and desist order. Heretofore the Commission has not been given such authority.

When the bill was considered in the House, the forfeiture section was amended on the floor to provide that the violation by the licensee had to be either "negligent or intentional." In contrast, section 312 of the Communications Act, which deals with administrative sanctions, provides that violations of that act must be either "willful or repeated." The phrase "willful or repeated" has a fixed meaning in the Communications Act and it has been interpreted by the Commission and courts a number of times. In your committee's opinion, it would be unwise at this time to introduce an entirely new concept for determining a licensee's responsibility for a violation.

At the hearing held by your committee on August 10, strong opposition was expressed by witnesses concerning such undefined terms, as well as to the apparent unlimited authority the House bill conferred upon the Commission to order a forfeiture.

Chairman Frederick W. Ford of the Federal Communications Commission, in the course of his testimony before your committee on August 10, suggested that some qualifying language should be written into the forfeiture section so as to provide for a notice to be given to the licensee of the alleged violation of the Communications Act or of the Commission's rule or regulation in question.

Witnesses for the National Association of Broadcasters, for the Federal Communications Commission Bar Association, for the American Bar Association, as well as other broadcasters, testified in opposition to section 7 of the House bill with respect to forfeitures.

In general, the theme of this opposition was the unlimited authority given the Commission to order a forfeiture on a broadcast licensee before such licensee was informed of the violation of a specific provision of the act or of the violation of a specific rule or regulation of the Commission. Such opposition was also based on the fact that the licensee was not given an opportunity, before the imposition of such forfeiture, either to have a hearing before the Commission or to show why he should not be held liable.

Your committee was concerned with the gravity of the lack of due process the bill as passed by the House presented. As reported by your committee, the bill would provide that where a licensee or permittee willfully or repeatedly failed to operate his station substantially as set forth in his license, or willfully or repeatedly failed to observe any provision of the Communications Act or the Commission's rules and regulations, the Commission may order such licensee to forfeit to the United States a sum of not to exceed \$1,000 for each day during which the offense continued. Such forfeiture would be in addition to any other penalty provided for in the Communications Act. Also, your committee inserted the word "final" before "cease and desist." This is necessary in order to make it clear that if a cease and desist order has been appealed the forfeiture will not be imposed while a final determination is being made on the cease and desist order.

Your committee specifically authorizes the imposition of a forfeiture where there is a violation of the amendment herein provided as section 317(c), which concerns the responsibility of a licensee to make announcements with reference to certain matters that are broadcast, as

well as the amendment added as section 509(a)(4), which concerns the responsibility of a licensee to prohibit deceptive practices in cases of contests of intellectual knowledge, intellectual skill, or chance.

As further amended by your committee, the bill would provide that before forfeiture liability shall attach, the Commission shall send to the licensee or permittee a written notice of apparent liability. Such notice is to be given to the licensee or sent to him by registered or certified mail. In this notice the Commission would be required to give information as to the date, the facts, and the nature of the violation or charge and also specifically identify the particular provision of the Communications Act or of the specific rule or regulation of the license, permit or cease and desist order involved.

So as to bar the imposition of a forfeiture on a "stale" violation, the forfeiture section, as revised by your committee, would in effect establish a statute of limitation beyond which the Commission could not go in ordering a forfeiture against a licensee. Thus, paragraph (3) of subsection (b), as proposed to be added to section 503 of the Communications Act, would provide that no forfeiture liability under subsection (b)(1) shall attach for any violation occurring more than 1 year prior to the date of the issuance of the notice of apparent liability, and in no event shall the forfeiture imposed for the acts set forth in any notice of apparent liability exceed \$10,000.

While the Commission is not limited as to the number of notices of apparent forfeiture liability it may send to any one licensee, nevertheless it is the intention of your committee that the forfeiture sanction will be reasonably administered.

If a licensee flagrantly disregards the provisions of the Communications Act or the Commission's rules and regulations, the Commission should resort promptly to the more drastic sanction of revocation or recommend prosecution of such licensee under the criminal sections of the act.

The forfeitures proposed by this bill are not intended to apply to the radio stations governed by the provisions of parts II and III of title III of the Communications Act.

Representatives of the Federal Communications Commission Bar Association and of the Administrative Law Section of the American Bar Association expressed concern as to the lack of authority in the bill for judicial review of Commission action in ordering a forfeiture. Both of these groups urged the adoption of an amendment that would provide for such judicial review.

Accordingly, your committee has recommended an amendment to section 504(a) of the Communications Act (which section prescribes the procedure for the collection of a forfeiture) so as to provide that in any suit for the recovery of a forfeiture, the trial thereof shall be on the merits de novo. Thus, a suit brought by the United States in a U.S. district court to enforce a forfeiture ordered by the Commission would not be merely a collection proceeding, but one in which the person against whom the forfeiture is ordered is given an opportunity to contest on the merits the action of the Commission.

Also, in order to safeguard further the rights of the licensee, the bill as reported by your committee would further amend section 504 of the Communications Act by adding thereto a new subsection designated as subsection (c).

Such new subsection would provide that the pendency of a forfeiture action, prior to final adjudication thereof, as provided in the proposed amendment to section 504(a), shall be without prejudice to the rights of the licensee in any other proceeding before the Commission.

When the representatives of the American Bar Association testified before your committee, fear was expressed that the Commission would take into account, in other proceedings before it in which a licensee was involved, the pendency of a forfeiture order which the Commission had issued against such license and prior to final adjudication of the licensee's liability.

The amendment to section 504 of the Communications Act, added by your committee as subsection (c) to said section, is not intended to mean that the facts upon which a notice of forfeiture liability against a licensee is based cannot be considered by the Commission in connection with an application for renewal of a license, for example, or with respect to the imposition of other sanctions authorized by the Communications Act of 1934.

One purpose that the "prejudice" provision in your committee's proposed addition of subsection (c) to section 504 would serve would be to prevent the mere existence of an order of forfeiture (that had not yet been confirmed after trial in a Federal district court) from being used against the licensee. However, facts going to the fitness of a licensee could be introduced in evidence against such licensee notwithstanding that such facts are the basis of an order of forfeiture. The licensee could not, therefore, complain of the introduction of such evidence so long as he has the right to cross-examine the witnesses introducing it and the further right to offer evidence to rebut it.

CONCLUSION

Your committee feels that the public interest will be served by the adoption of this legislation. The strengthening of the Communications Act provided by the legislation herein recommended, plus vigorous leadership, should check the malpractices that were disclosed in the recent House hearings and should materially lessen the possibilities of recurrence. We feel that the amendments herein recommended would tighten the procedures and perfect the legislation as it was reported and amended by the House.

We urge the adoption of the amended bill.

CHANGES IN EXISTING LAW

Changes in existing law made by the House amendments, as amended by the amendments recommended by the committee, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italics*, and existing law in which no change is proposed is shown in *roman*):

COMMUNICATIONS ACT OF 1934, AS AMENDED

* * * * *

PROVISIONS RELATING TO THE COMMISSION

SEC. 4. (a) * * *

(b) * * * Such commissioners shall not engage in any other business, vocation, profession, or employment []; but this shall not apply to the presentation or delivery of publications or papers for which a reasonable honorarium or compensation may be accepted]. * * *

ALLOCATION OF FACILITIES: TERM OF LICENSES

SEC. 307. (a) * * *

(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, * * * as hereinafter provided. * * * Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405, the Commission shall continue such license in effect. *Consistently with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, public interest, convenience, or necessity would be served by such action.*

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.

[(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 appli-

cant 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 redraft the issues urged by the protestant in accordance with the facts or 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 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.]

[(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 other-

wise 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.】

SEC. 309. (a) Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

(b) Except as provided in subsection (c) of this section, no such application—

(1) for an instrument of authorization in the case of a station in the broadcasting or common carrier services, or

(2) for an instrument of authorization in the case of a station in any of the following categories:

(A) fixed point-to-point microwave stations (exclusive of control and relay stations used as integral parts of mobile radio systems),

(B) industrial radio positioning stations for which frequencies are assigned on an exclusive basis,

(C) aeronautical en route stations,

(D) aeronautical advisory stations,

(E) airdrome control stations,

(F) aeronautical fixed stations, and

(G) such other stations or classes of stations, not in the broadcasting or common carrier services, as the Commission shall by rule prescribe,

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.

(c) Subsection (b) of this section shall not apply—

(1) to any minor amendment of an application to which such subsection is applicable, or

(2) to any application for—

(A) 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) a 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) an authorization of facilities for remote pickups, studio links and similar facilities for use in the operation of a broadcast station,

(F) authorizations pursuant to section 325(b) where the programs to be transmitted are special events not of a continuing nature,

(G) a special temporary authorization for nonbroadcast operation not to exceed thirty 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) an authorization under any of the proviso clauses of section 308(a).

(d)(1) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which subsection (b) of this section applies at any time prior to the day of Commission grant thereof without hearing or the day of formal designation thereof for hearing; except 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. The petitioner shall serve a copy of such petition on the applicant. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with subsection (a). 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.

(2) 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 (a), it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with subsection (a), it shall proceed as provided in subsection (e).

(e) If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, 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. When the Commission has so designated an application for hearing the parties in interest, if any, who are not notified by the Commission of such action 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.

(f) *When an application subject to subsection (b) has been filed, the Commission, notwithstanding the requirements of such subsection, may, if the grant of such application is 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 of a temporary authorization 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.*

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

(h) *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 of this Act.*

CONSTRUCTION PERMITS

SEC. 319. (a) * * *

(b) * * *

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

(d) * * *

REHEARINGS BEFORE COMMISSION

SEC. 405. *After a decision, order, or requirement has been made by the Commission in any proceeding, [and] 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 * * * 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. * * **

[REFUSAL OF LICENSES AND PERMITS IN CERTAIN CASES]

[SEC. 311. The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under section 313.]

SPECIAL REQUIREMENTS WITH RESPECT TO CERTAIN APPLICATIONS IN THE BROADCASTING SERVICE

“SEC. 311. (a) When there is filed with the Commission any application to which section 309(b)(1) applies, for an instrument of authorization for a station in the broadcasting service, the applicant—

(1) shall give notice of such filing in the principal area which is served or is to be served by the station; and

(2) if the application is formally designated for hearing in accordance with section 309, shall give notice of such hearing in such area at least ten days before commencement of such hearing.

The Commission shall by rule prescribe the form and content of the notices to be given in compliance with this subsection, and the manner and frequency with which such notices shall be given.

(b) Hearings referred to in subsection (a) may be held at such places as the Commission shall determine to be appropriate, and in making such determination in any case the Commission shall consider whether the public interest, convenience, or necessity will be served by conducting the hearing at a place in, or in the vicinity of, the principal area to be served by the station involved.

(c)(1) If there are pending before the Commission two or more applications for a permit for construction of a broadcasting station, only one of which can be granted, it shall be unlawful, without approval of the Commission, for the applicants or any of them to effectuate an agreement whereby one or more of such applicants withdraws his or their application or applications.

(2) The request for Commission approval in any such case shall be made in writing jointly by all the parties to the agreement. Such request shall contain or be accompanied by full information with respect to the agreement, set forth in such detail, form, and manner as the Commission shall be rule require.

(3) The Commission shall approve the agreement only if it determines that the agreement is consistent with the public interest, convenience, or necessity. If the agreement does not contemplate a merger, but contemplates the making of any direct or indirect payment to any party thereto in consideration of his withdrawal of his application, the Commission may determine the agreement to be consistent with the public interest, convenience, or necessity only if the amount or value of such payment, as determined by the Commission, is not in excess of the aggregate amount determined by the Commission to have been legitimately and prudently expended and to be expended by such applicant in connection with preparing, filing, and advocating the granting of his application.

(4) For the purposes of this subsection an application shall be deemed to be “pending” before the Commission from the time such application is filed with the Commission until an order of the Commission granting or denying it is no longer subject to rehearing by the Commission or to review by any court.

APPLICATION OF ANTITRUST LAWS ; REFUSAL OF LICENSES AND PERMITS
IN CERTAIN CASES

SEC. 313. (a) All laws of the United States * * * or foreign radio communications. * * * *Provided, however,* That such licensee shall have the same right of appeal or review, as is provided by law in respect of other decrees and judgments of said court.

(b) *The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under this section.*

ADMINISTRATIVE SANCTIONS

SEC. 312. (a) [Any station license or construction permit may be revoked.] *The Commission may revoke any station license or construction permit—*

- (1) * * *
- (2) * * *
- (3) * * *
- (4) * * *

(5) for violation of or failure to observe any final cease and desist order issued by the Commission under this section [.] ; or

(6) for violation of section 1304, 1343, or 1464 of Title 18 of the United States Code.

(b) Where any person (1) has failed to operate substantially as set forth in a [license] license, [or] (2) has violated or failed to observe any of the provisions of this Act, or section 1304, 1343, or 1464 of Title 18 of the United States Code, or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United [States] States, the Commission may order such person to cease and desist from such action.

- (c) * * *
- (d) * * *
- (e) * * *

[FORFEITURE IN CASES OF REBATES AND OFFSETS]

FORFEITURES

SEC. 503. (a) * * *

(b)(1) *Any licensee or permittee of a broadcast station who—*

(A) *willfully or repeatedly fails to operate such station substantially as set forth in his license or permit.*

(B) *willfully or repeatedly fails to observe any of the provisions of this Act or of any rule or regulation of the Commission prescribed under authority of this Act or under authority of any treaty ratified by the United States.*

(C) *fails to observe any final cease and desist order issued by the Commission,*

(D) *violates section 317(c) or section 509(a)(4) of this Act, or*

(E) *violates section 1304, 1343, or 1464 of title 18 of the United States Code,*

shall forfeit to the United States a sum not to exceed \$1,000. Each day during which such violation occurs shall constitute a separate offense. Such forfeiture shall be in addition to any other penalty provided by this Act.

(2) No forfeiture liability under paragraph (1) of this subsection (b) shall attach unless a written notice of apparent liability shall have been issued by the Commission and such notice has been received by the licensee or permittee or the Commission shall have sent such notice by registered or certified mail to the last known address of the licensee or permittee. A licensee or permittee so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulations prescribe, why he should not be held liable. A notice issued under this paragraph shall not be valid unless it sets forth the date, facts, and nature of the act or omission with which the licensee or permittee is charged and specifically identifies the particular provision or provisions of the law, rule, or regulation or the license, permit, or cease and desist order involved.

(3) No forfeiture liability under paragraph (1) of this subsection (b) shall attach for any violation occurring more than one year prior to the date of issuance of the notice of apparent liability and in no event shall the forfeiture imposed for the acts or omissions set forth in any notice of apparent liability exceed \$10,000.

PROVISIONS RELATING TO FORFEITURES

SEC. 504. (a) The forfeitures provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the person or carrier has its principal operating office or in any district through which the line or system of the carrier runs: *Provided*, That any suit for the recovery of a forfeiture imposed pursuant to the provisions of this Act shall be a trial *de novo*: *Provided further*, That in the case of forfeiture by a ship, said forfeiture may also be recoverable by way of libel in any district in which such ship shall arrive or depart.* * *

(b) The forfeitures imposed by parts II and III of title III and section 507] sections 503(b) and 507 of this Act shall be subject to remission or mitigation by the Commission, upon application therefor, under such regulations and methods of ascertaining the facts as may seem to it advisable, and, if suit has been instituted, the Attorney General, upon request of the Commission, shall direct the discontinuance of any prosecution to recover such forfeitures: *Provided*, however, That no forfeiture shall be remitted or mitigated after determination by a court of competent jurisdiction.

(c) In any case where the Commission issues a notice of apparent liability looking toward the imposition of a forfeiture under this Act, that fact shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdiction has ordered payment of such forfeiture, and such order has become final.

[ANNOUNCEMENT THAT MATTER IS PAID FOR]

[SEC. 317. All matter broadcast by any radio station for which service, money, or any other valuable consideration is directly or indirectly paid, or promised to be charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.]

ANNOUNCEMENT WITH RESPECT TO CERTAIN MATTER BROADCAST

SEC. 317. (a)(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: Provided, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

(b) In any case where a report has been made to a radio station, as required by section 508 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

(c) The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(d) The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity do not require the broadcasting of such announcement.

(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

TITLE V—PENAL PROVISIONS—FORFEITURES

SEC. 501. * * *

VIOLATION OF GREAT LAKES AGREEMENT

SEC. 507. (a) * * *

(b) * * *

DISCLOSURE OF CERTAIN PAYMENTS

SEC. 508. (a) Subject to subsection (d), any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

(b) Subject to subsection (d), any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

(c) Subject to subsection (d), any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

(d) The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317(d), an announcement is not required to be made under section 317.

(e) The inclusion in the program of the announcement required by section 317 shall constitute the disclosure required by this section.

(f) The term "service or other valuable consideration" as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast, or for use on a program which is intended for broadcasting over any radio station, unless it is so furnished in consideration for an identification in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

(g) Any person who violates any provision of this section shall, for each such violation, be fined not more than \$10,000 or imprisoned not more than one year, or both.

PROHIBITED PRACTICES IN CASE OF CONTESTS OF INTELLECTUAL KNOWLEDGE, INTELLECTUAL SKILL, OR CHANCE

SEC. 509. (a) It shall be unlawful for any person, with intent to deceive the listening or viewing public—

(1) To supply to any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill any special and secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined.

(2) By means of persuasion, bribery, intimidation, or otherwise, to induce or cause any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill to refrain in any manner from using or displaying his knowledge or skill in such contest, whereby the outcome thereof will be in whole or in part prearranged or predetermined.

(3) To engage in any artifice or scheme for the purpose of prearranging or predetermining in whole or in part the outcome of a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance.

(4) To produce or participate in the production for broadcasting of, to broadcast or participate in the broadcasting of, to offer to a licensee for broadcasting, or to sponsor, any radio program, knowing or having reasonable ground for believing that, in connection with a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance constituting any part of such program, any person has done or is going to do any act or thing referred to in paragraph (1), (2), or (3) of this subsection.

(5) To conspire with any other person or persons to do any act or thing prohibited by paragraph (1), (2), (3), or (4) of this subsection, if one or more of such persons do any act to effect the object of such conspiracy.

(b) For the purposes of this section—

(1) The term "contest" means any contest broadcast by a radio station in connection with which any money or any other thing of value is offered as a prize or prizes to be paid or presented by the program sponsor or by any other person or persons, as announced in the course of the broadcast.

(2) The term "the listening or viewing public" means those members of the public who, with the aid of radio receiving sets, listen to or view programs broadcast by radio stations.

(c) Whoever violates subsection (a) shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

