

STATEMENT OF FREDERICK W. FORD, CHAIRMAN  
FEDERAL COMMUNICATIONS COMMISSION,  
BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND POWER  
OF THE SENATE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
86th CONGRESS, ON S. 1898

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AUGUST 10, 1960

My name is Frederick W. Ford, and I am here today as Chairman of the Federal Communications Commission.

On June 28, 1960, immediately after the House of Representatives approved S. 1898 as amended by the House Committee on Interstate and Foreign Commerce, and as further amended on the floor of the House, the Commission informed the Chairman of your Senate Interstate and Foreign Commerce Committee in pertinent part that: "In our view the provisions contained in this bill would be most helpful to the Commission in carrying out the objectives of the Communications Act, and we urge that the Senate make every effort to consider this legislation during this Session of Congress."

The Commission wishes to thank you for scheduling this hearing to consider this proposed legislation. The substance of several sections of this bill were included in the Commission's legislative proposals before the 86th Congress.

The Commission has also participated with representatives of the industry, Federal Communications Bar Association, the staff of the House Committee on Interstate and Foreign Commerce, and the House Legislative Counsel in revising and redrafting many of the sections of S. 1898 prior to the bill's passage by the House of Representatives.

Unless the Committee has some objection, we will consider the sections of the proposed Act in numerical order.

Section 1 merely provides a short title for the bill, to which we have no objection.

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 Commission supports the enactment of this section which is one of the Commission's legislative proposals before the 86th Congress, as S. 1735. It is also proposed in Section 114 of H.R. 4800. The Communications Act amendments, 1952, 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 will in effect repeal this special provision. The remaining language of section 4(b) of the Communications Act will make uniform among the regulatory agencies a similar prohibition against Commissioners engaging in any other business, vocation, profession, or employment. The Commission accordingly recommends the repeal of that portion of section 4(b) of the Communications Act as proposed in Section 2.

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\*\*\*\*"

This language has always been construed as giving the Commission discretion to issue broadcast licenses for a term of less than 3 years and this has often been done. At the present time broadcast licenses are issued for a three year period and the rules so provide. We have 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 rule making to that end is now outstanding.

The substance of Section 4 of S. 1898 dealing with section 309 of the Communications Act is identical to the substance of S. 1898 as passed by the Senate, August 19, 1959. You will recall that when S. 1898 was considered by your Subcommittee, there was a substantial area of disagreement between representatives of the Commission and the Federal Communications Bar Association. At the conclusion of that hearing, Senator Pastore suggested that the Commission and the FCBA should work out language acceptable to all of us. We did so, submitted it to this Subcommittee on July 22, 1959, and on August 19, 1959, the Senate passed S. 1898.

At the time the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce considered S. 1898, the Commission's staff was requested to assist

in a revision of S. 1898. Members of our staff and representatives of FCBA and the American Bar Association worked with the staff of the Committee and the House Legislative Counsel to revise the bill. Great care was taken to preserve the substance just as it was passed by the Senate. That proposal is now Section 4 of S. 1898 as passed by the House.

When we transmitted the language of S. 1898 to your Committee on July 22, 1959, the Commission set forth at some length its reasons for supporting this bill. Our position on this point has not changed and we again urge the Senate to make every effort to approve this legislation in this session of Congress.

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. The Commission supports these amendments.

This section also deals with the problem of "pay-offs" 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.

We believe that this proposal will do much to discourage the filing of strike applications but will not preclude bona fide settlements among

mutually exclusive applicants for the same broadcast facilities.

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 ten days on grounds similar to those on which the Commission is now authorized to revoke a license. This provision would permit greater flexibility in the Commission's enforcement program and is one of several measures short of revocation which would enhance the ability of the Commission to deal with the problems now facing it.

Section 6 would also authorize the Commission to revoke or suspend a station license for violation of sections 1304, 1343, or 1464 of Title 18 of the United States Code. Section 1304 of the Criminal Code prohibits the broadcast of lottery information; section 1343 prohibits fraud by radio; and section 1464 prohibits the utterance of obscene, indecent, or profane language by radio.

We have earlier proposed legislation authorizing the Commission to suspend station licenses and construction permits for a period not exceeding ninety days, which is introduced as S. 3528. The Commission has no objection to the lesser maximum period of suspension as provided in section 6 of this proposal and would welcome legislation to authorize the suspension of station licenses and construction permits for such periods in appropriate situations.

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.

The only sanctions presently available to the Commission, except in certain cases involving common carrier matters and licenses of ships radio stations, is revocation of the station license. This sanction is drastic. The revocation of a license to operate a broadcast station can have a far reaching effect on the community it serves as well as upon the licensee of the station.

The current problems which have recently come to light in broadcasting make it desirable that some less drastic but effectively deterring sanctions should be available to the Commission.

The Commission is of the view that authority to impose a monetary forfeiture on broadcast licensees would provide it with an effective tool in dealing with violations in situations where either revocation or suspension does not appear to be appropriate. The Commission has already submitted proposed legislation to the Congress, designed to provide it with authority to impose forfeitures, for violations in services other than broadcasting, provided in S. 1737 approved by the Senate August 21, 1959, and H.R. 6574; and S. 3528 which is designed to provide it with authority to impose forfeitures for certain

violations by permittees and licensees of broadcast stations.

This section would give the Commission authority to impose a forfeiture, payable into the Treasury of the United States, upon any licensee or permittee who deviates from the requirements of the Communications Act or any rule or regulation of the Commission. The proposal permits the Commission to vary the severity of the forfeiture to suit the nature of the offense, except that the proposal does not permit a forfeiture to exceed \$1,000 for a particular offense. There has been some opposition to authority on the part of the Commission to impose a forfeiture without a hearing. However, the proposal affords any person against whom a forfeiture is levied an opportunity to request the Commission for the remission or mitigation of such forfeiture. If, after consideration of any applications for remission or mitigation, the forfeiture is not paid, it would be recoverable by civil suit in an appropriate United States District Court as provided in subsection 504(a) of the Communications Act.

Section 504(a) provides in pertinent part:

"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 . . . Such forfeitures shall be in addition to any other general or specific penalties herein provided. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures under this Act. . . ."

The licensee in such a civil suit would be entitled to demand a trial by jury as provided in Federal Rules of Civil Procedure, Rule 38, 28 U.S.C.A. This procedure insures that the interests of the licensee will be fully protected.

The Commission strongly approves the proposal in section 7.

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, trade mark 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 guide lines which are of considerable assistance in determining the meaning of this language. This would enable the Commission to be in a position to place a reasonable interpretation upon this general 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 statute 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 other information to enable the licensee to make appropriate announcement of sponsorship. The term

"reasonable diligence" is appropriate in the circumstances, since it 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. We believe that the term "reasonable diligence" has a sufficiently accepted legal meaning so as to permit the Commission to apply this standard in given factual situations.

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

Section (e) of the proposed section 317 grants 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.

The Commission fully supports the proposals set forth in Section 8 of S. 1898 as passed by the House of Representatives. However, for the sake of clarity the final sentence of section (d) of the disclosure statute providing that an appropriate

announcement shall constitute the disclosure required, should appear as a separate subsection of the proposed statute.

Any broadcast station licensee who fails to comply with the provisions of Section 317 of the Act as now written is subject to the penalties set forth in Section 501 of the Communications Act. However, these sections apply only to the licensee of the station and afford no control over employees or other persons who may receive payment for broadcasting material without the announcement required by section 317. Moreover, these two sections of the Communications Act have no application whatsoever to those who make the payment or promises to pay in exchange for the clandestine advertising of their products. It is the view of the Commission that a criminal statute such as section 8, providing for a fine or imprisonment, or both, would be a substantial and effective deterrent to this undesirable practice.

Another problem that has faced the Commission, as well as this Committee, is that of deceptive contests or fixed quiz shows. 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.

The Commission is in full accord with the general objectives of section 509. The Commission has prepared and sent to the Bureau of the Budget proposed legislation that would provide criminal sanctions for deceptive broadcast practices with reference to tests or contests of intellectual skill or knowledge.

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 Rule Making (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.

The Commission feels that the proposed criminal statute will 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 program or the means to acquire it. Thus, the Commission believes it desirable that the Congress enact section 9 as a criminal statute which would penalize those persons responsible in any way for the broadcast of a deceptive program of the type provided. The Commission is of the opinion that a criminal statute providing punishment by a fine or imprisonment, or both, would be a substantial and effective deterrent to future activities of this type.

This language of section 9 should be helpful to the Commission.

FOR IMMEDIATE RELEASE  
July 5, 1960

60-79

FROM THE SENATE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Senator John O. Pastore (D-R.I.), Chairman of the Subcommittee on Communications of the Senate Committee on Interstate and Foreign Commerce announced today that hearings would be held on S. 1898, the so-called payola legislation, starting August 10, 1960, at 10 a.m., in room 5110, new Senate Office Building.

The legislation as it passed the House involves the following general categories:

1. to provide a pre-grant procedure in case of certain applications;
2. to impose limitations on payoffs between applicants;
3. to grant authority to suspend station licenses;
4. to require disclosure of payments made for the broadcasting of certain matter;
5. to grant authority to impose forfeitures in the broadcast service; and
6. to prohibit deceptive practices in contests of intellectual knowledge, skill, or chance.

The hearings will be on the amendments that were adopted by the House Committee with particular emphasis given to the so-called suspension and forfeiture provisions as adopted by the Committee and amended on the House Floor.