
FACILITATING THE PROMPT AND ORDERLY CONDUCT
OF THE BUSINESS OF THE FEDERAL COMMUNICA-
TIONS COMMISSION

JULY 17, 1961.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HARRIS, from the Committee on Interstate and Foreign Com-
merce, submitted the following

R E P O R T

[To accompany H.R. 7856]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 7856) to amend the Communications Act of 1934, as amended, for the purpose of facilitating the prompt and orderly conduct of the business of the Federal Communications Commission, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

GENERAL STATEMENT

PURPOSE OF LEGISLATION

The purpose of this legislation is to modify the Communications Act of 1934 so that the Federal Communications Commission will be able, by making better use of its own time and more effective use of its experienced and technically qualified personnel, to handle its large workload of adjudication cases¹ with greater speed and efficiency than is presently possible.

It is hoped and believed that these changes in the law will enable the Commission to devote more of its time to major matters of policy and planning and to the more significant adjudication cases—primarily those involving issues of general communications importance.

¹ The term "adjudication cases" is used in this report to refer to what are often called quasi-judicial proceedings, as distinguished from rulemaking proceedings and executive and administrative proceedings or matters. See sec. 2(c) and (d) of the Administrative Procedure Act, which are printed in the appendix to this report.

PRINCIPAL PROVISIONS OF THE BILL

Hearings in adjudication cases.—Section 409(a) of present law now denies to the Commission the authority to utilize a commissioner or commissioners (as distinguished from the Commission itself) for the conduct of hearings in adjudication cases. The bill eliminates present section 409(a) and thus will remove this restriction.

After the enactment of this legislation the provisions of section 7(a) of the Administrative Procedure Act (see the appendix to this report) will determine the question of who may conduct hearings in adjudication cases. That section provides that hearings in adjudication cases shall be conducted by the agency, by one or more members of the agency, or by one or more hearing examiners appointed as provided in the Administrative Procedure Act.

Review of initial decisions of hearing officers.—Section 409(b) of the Communications Act of 1934 now contains the provision which governs intra-agency review of initial decisions of hearing officers in adjudication cases. It provides that when such decisions have been filed—

* * * the Commission shall permit the filing of exceptions to such initial decision by any party to the proceeding and shall, upon request, hear oral argument on such exceptions before the entry of any final decision, order, or requirement.

In the bill (see sec. 409(b) in the reported bill) this provision is changed to provide that in any such case—

any party to the proceeding shall be permitted to file exceptions and memoranda in support thereof to the initial, tentative, or recommended decision, which shall be passed upon by the Commission or by the authority within the Commission, if any, to whom the function of passing upon the exceptions is delegated under section 5(d)(1).

Section 5(d)(1) of the present law grants to the Commission the authority to delegate functions to a panel of commissioners, an individual commissioner, an employee board, or an individual employee, but section 5(d)(1) and section 409(b), taken together, have been interpreted to mean that the Commission may not delegate review functions related to the disposition of adjudication cases. Therefore, under the present law the Commission itself must pass on the exceptions to initial decisions of hearing officers and must itself hear the oral argument. It thus has been unable to utilize others within the Commission for the performance of these review functions, even in routine cases of relatively minor importance.

The bill would change present law so as to authorize the Commission to delegate to a panel of commissioners, an individual commissioner, an employee board, or an individual employee the function of passing on exceptions filed to an initial decision of a hearing officer or officers.

Oral argument.—Under the review provision now in section 409(b) the Commission is required in every case, when requested, to hear oral argument on the exceptions. This is a requirement which goes beyond the Administrative Procedure Act. Furthermore, no statute relating to any other Federal regulatory agency imposes such a requirement.

The committee feels that this absolute duty to hear oral argument, which was imposed upon the Commission by the Communications Act Amendments of 1952, is unduly burdensome and often unnecessarily time consuming, and therefore should be eliminated. This will be accomplished in the proposed new provision in section 409(b) quoted above. While the right to oral argument will be thus eliminated, the Commission (or other authority within the Commission exercising the function of passing on the exceptions) could in its discretion, of course, hear oral argument in all instances in which it is considered appropriate to do so. It is expected that the procedure of hearing oral argument will be employed in many instances by the Commission or such other authority within the Commission. However, the Commission or such other authority could refuse to hear such argument in those instances where in its judgment it would serve no useful purpose, as, for example, in the case of a frivolous appeal or one which has no merit or is designed largely to cause delay.

Delegation of functions to employees.—The functions of the Commission cover a broad range and are of great variety. Some of them are routine and of relatively minor importance, but others involve difficult problems which are of vital importance to the communications industry and the country. It is, therefore, essential that the Commission use good judgment in delegating its functions as authorized by section 5(d)(1), particularly the delegations to employees. The committee feels sure that the Commission will use good judgment. It is not aware of any instance in which the Commission has abused, or been charged with abusing, the considerable discretionary authority to delegate functions which it now possesses with respect to rule-making and other nonadjudicatory matters.

Obviously, functions involving basic policy decisions should not be delegated to an employee board or an individual employee. It is equally obvious that it would not be appropriate to take up the time of a panel of the Commission for the handling of matters which could be easily and efficiently handled by an employee board or an individual employee.

Also, it is necessary for the Commission, in utilizing employees for the performance of delegated functions, to select employees who are well qualified. The function of passing on exceptions to an examiner's initial decision in an adjudication case, for example, is an important one. The committee feels that it is of vital importance that employees who serve on a board to perform this function shall be competent and well qualified for the task.

The selection of employees to perform delegated functions must of necessity be left to the Commission. The committee is confident that the Commission will discharge this duty conscientiously and with good judgment.

With regard to the use of employee boards in reviewing examiners' initial decisions in adjudication cases, it is anticipated that this will not be done by the Commission in cases of general communications importance or cases involving new or novel legal issues or policy questions, but, rather, that such boards will be used for the most part in relatively routine cases and those involving the application of well-established principles to particular factual situations.

Commission review of action of delegates.—Section 5(d)(2) of the present law provides that any person aggrieved by any order, decision,

or report of a delegatee may file with the Commission an application for review, and states that every such application must be passed upon by the Commission. The Commission may affirm, modify, or set aside such order, decision, report, or action.

As has been indicated, under the present law this provision has no applicability to adjudication cases. This legislation will make this review provision applicable also to adjudication cases, and will make certain changes in such review provisions. (See subsec. (d) (4) through (7) in the bill.)

In the review provision as modified (see subsec. (d) (5) in the bill) it is specifically provided that in passing upon applications for review the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefor. This authority to grant or deny without specifying reasons is vitally important in furthering the purposes of this legislation. Without such authority the Commissioners' time would continue to be occupied, to a significant degree, by routine matters rather than by those involving important policy considerations. By permitting denial of the application for review without specifying reasons therefor, the Commission can dispose of such applications without undue burden and in a manner similar to that employed by the U.S. Supreme Court in handling petitions for a writ of certiorari. Further, the procedure provided for by this provision should save time and thereby speed up the handling of the business of the Commission.

Another important change is that the Commission, by published rule or order, will be authorized to limit the right to file applications for review by the Commission under section 5(d)(4), in adjudication cases, to proceedings involving issues of general communications importance.

The committee feels that this authority is vitally important in furthering the purposes of this legislation because it will enable the Commission to conserve time which may be better used for major matters of policy and planning and the consideration of cases involving issues of general communications importance. A similar provision is contained in section 17 of the Interstate Commerce Act and has been found helpful by that Commission. Of course, neither the provision contained in this legislation nor the provision of section 17 of the Interstate Commerce Act would prevent a party from securing judicial review of a decision by which such party feels aggrieved.

Rehearings.—The bill (sec. 3) would make conforming changes in section 405 of the act, which relates to petitions for rehearing. These changes are explained briefly in the section-by-section statement appearing below in this report.

Abolition of "review staff".—The bill would repeal subsection (c) of section 5 of the present law, which created, and provided for the exercise of certain functions by, a "review staff."

This subsection was added to the law by the Communications Act Amendments of 1952. It provides that the review staff shall be directly responsible to the Commission and shall perform no duties other than to assist the Commission, in cases of adjudication, in certain specified ways. Among other things the review staff is directed to prepare for the Commission, or any member thereof, without recommendations and in accordance with specific directions, memoranda, opinions, decisions, and orders. The Commission is directed not to

permit any employee who is not a member of the review staff to perform the duties and functions which are to be performed by the review staff.

This subsection has not worked out satisfactorily because of its rigid requirements. No similar provision is applicable to any other Federal regulatory agency. The Commission originally opposed its enactment and now favors its repeal. It feels that the restrictive provisions in this subsection result in waste and inefficiency, because they have the effect of depriving the Commission of the full assistance which the personnel of the review staff are capable of furnishing. Further, since the review staff cannot make recommendations, it must first receive instructions from the Commission on all interlocutory matters, no matter how simple or routine, and then return again with a draft opinion and order for the Commission's approval. The Chairman of the Commission testified that the repeal of this subsection would result in a substantial saving in time and energy by the Commission. After repeal of this provision the personnel of the review staff can be used by the Commission to greater advantage than at present.

Internal separation of functions.—At present, section 409(c)(2) of the act provides, in part, that in any case of adjudication which has been designated for hearing—

* * * no member of the Office of the General Counsel, the Office of the Chief Engineer, or the Office of the Chief Accountant shall * * * directly or indirectly make any additional presentation respecting such case, unless upon notice and opportunity for all parties to participate.

This provision has been construed by the Commission to prohibit any contact, in connection with adjudication cases, between the Commission and the personnel of the Offices of the General Counsel, the Chief Engineer, and the Chief Accountant. The provision was enacted by the Communications Act Amendments of 1952 and its enactment was opposed at that time by the Commission. It goes far beyond the separation-of-functions provision in section 5(c) of the Administrative Procedure Act, the provision applicable to other Federal regulatory agencies. The Commission has advocated repeal of this unduly restrictive provision because it has the effect of denying to the Commission the expert advice and services of qualified personnel in those offices. The committee agrees with the Commission's view. The provision is therefore omitted from section 409 as it is amended by the bill.

The committee believes, however, that the Commission personnel who are engaged in the presentation or preparation for presentation of a particular case should be prevented from making *ex parte* presentations concerning matters involved in that case, or a factually related case, without notice and opportunity for all parties to participate. This principle is now contained in the separation-of-functions provision in section 5(c) of the Administrative Procedure Act (see the appendix to this report), which will apply to the Federal Communications Commission after this legislation is enacted. Indeed, this bill in effect goes further than section 5(c) in providing (see the amended sec. 5(c)(2) in the bill) that its provisions shall apply in cases involving applications for initial licenses. The committee feels that there are

good reasons (in the case of the Communications Act of 1934, at least) for applying the separation-of-functions provisions of section 5(c) to cases involving applications for initial licenses as well as to other cases of adjudication.

REORGANIZATION PLAN NO. 2 OF 1961

Broadly speaking, this legislation has the same basic objectives as Reorganization Plan No. 2 of 1961, which the President submitted to Congress on April 27, 1961, and which was disapproved by the adoption of House Resolution 303 on June 15, 1961.

This committee opposed the reorganization plan, not because of disagreement with its basic objectives but because it felt these objectives could be carried out properly only by amending the present law.

The committee believes that this bill makes the essential amendments. The principal respect in which this bill differs from the reorganization plan is that the bill does not make review of an initial decision in an adjudication case discretionary, upon the vote of a majority of the members of the Commission less one. (Instead, parties would have a right to obtain review of the initial decision, but not necessarily by the full commission.) The bill also omits the proposal in the plan to give the Chairman of the Commission the authority to designate the Commission personnel, including members of the Commission, who would exercise the functions delegated by the Commission. Under the bill the power to assign or designate personnel would remain where it is at present, with the Commission.

COMMITTEE HEARINGS

On May 25, 1961, the chairman of this committee introduced H.R. 7333, dealing with the same general subject as the bill here reported. The Subcommittee on Regulatory Agencies of this committee held hearings on H.R. 7333 on June 13, 14, and 15 during which the Special Assistant to the President for Regulatory Agencies, the Chairman and other members of the Federal Communications Commission, representatives of the Federal Communications Bar Association, and representatives of the industry testified or presented statements. Opposition to several provisions of H.R. 7333 was expressed, and the Commission offered for the subcommittee's consideration a substitute measure—the same measure which had been introduced by Senator Pastore, as S. 2034 on June 7, 1961. Subsequently the subcommittee met to consider H.R. 7333 and the Commission's suggested substitute (S. 2034) and voted to report to the entire committee a substitute bill, similar in most respects to the Commission's proposal. This is the bill here reported to the House.

SECTION-BY-SECTION EXPLANATION OF THE BILL

SECTION 1

This section proposes to repeal subsection (c) of section 5 of the present law, which created and prescribed the duties of a "review staff." The reasons for its repeal have been explained above in this report.

SECTION 2

This section proposes to rewrite subsection (d) of section 5 of the present law. As so rewritten, subsection (d) will contain eight paragraphs:

Paragraph (1).—This paragraph provides that, when necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may by published rule or by order delegate any of its functions to a panel of Commissioners, an individual Commissioner, an employee board, or an individual employee. This authority differs from that granted in paragraph (1) at present, in that, because of deletion from paragraph (1) of the words “Except as provided in section 409,” and certain modifications in section 409, the Commission will have authority to delegate review functions in adjudication cases. Other differences are that under the amended paragraph delegations may be made by “published rule” as well as by order. This has reference to publication in the Federal Register. To the extent practicable such orders will be published or made public and served on all parties to a proceeding. Also new is the provision that any such rule or order may be adopted, amended, or rescinded only by a vote of a majority of the Commissioners then holding office. A sentence is included to make it clear that this paragraph is not intended to give the Commission authority to provide for the conduct of hearings in adjudication cases by persons other than those referred to in clauses (2) and (3) of section 7(a) of the Administrative Procedure Act—such persons being members of the agency and hearing examiners appointed as provided in section 11 of that act.

It is not intended that the Commission shall be able to delegate to any other authority within the Commission either the powers granted to it by this paragraph or any of the powers or duties granted to or imposed upon it by paragraphs (4), (5), and (6) of subsection (d) as proposed to be amended.

Paragraph (2).—This paragraph states that the term “order, decision, report, or action,” as used in subsection (d), does not include an initial, tentative, or recommended decision to which exceptions may be filed as provided in section 409(b). The purpose of this paragraph is to make it clear that the review provisions of subsection (d) will apply only for purposes of review of any order, decision, report, or action of a delegatee, and do not apply for purposes of review of initial or recommended decisions of hearing officers in adjudication cases. Review in the latter cases is provided for by section 409(b) as proposed to be amended by this legislation.

Paragraph (3).—This paragraph provides that any order, decision, report or action of a delegatee, unless reviewed as provided in paragraph (4), shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission. This paragraph repeats in substance a sentence which is in the present subsection (d)(1).

Paragraphs (4), (5), (6), and (7).—Paragraph (4) provides that any person aggrieved by an order, decision, report or action of a delegatee may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe. This paragraph also provides that the Commission, on its own initiative, may

review in whole or in part, at such time and in such manner as it shall determine, any order, decision, report, or action made or taken by a delegatee. A proviso is included in paragraph (4) giving the Commission the right, by published rule or by order, to limit the right to file applications for review, under this paragraph, of orders, decisions, reports, or actions of panels of commissioners or employee boards in cases of adjudication, to proceedings involving issues of general communications importance. The need for this provision has been explained above in this report.

Paragraph (5) provides that in passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reason therefor. An aggrieved party will, of course, have the right to appropriate judicial review. The need for this provision is discussed above in this report.

Paragraph (5) also contains a provision, not found in the present subsection (d), providing that no application for review shall rely on questions of fact or law upon which the panel of commissioners, individual commissioner, employee board, or individual employee has been afforded no opportunity to pass. In this way, the case will be presented to the Commission with a ruling on every question of fact or law. Further, such completeness is essential if the case is appealed to the courts upon the denial (without assigning reasons) of the application for review. The courts have made clear that before they can perform their review functions, the agency must supply adequate reasons for disposition of all significant points raised before it (*Tel-anserphone, Inc. v. FCC*, 97 U.S. App. D.C. 398, 401, 231 F. 2d 732, 735; *Television Corporation of Michigan, Inc. v. FCC*, case No. 16,253, decided July 13, 1961). The present section 405, dealing with petitions for rehearing, contains a requirement similar to that provided here with respect to the application for review. It is expected that this provision will assist the Commission to dispose of applications for review with a minimum expenditure of its time.

Paragraph (6), which provides that when the Commission grants an application for review it may affirm, modify, or set aside the order or other action complained of, or may order a rehearing upon such order or other action in accordance with section 405, merely repeats a sentence now contained in section 5(d)(2).

Paragraph (7) provides that the filing of an application for review shall be a condition precedent to judicial review of any order or other action made or taken pursuant to a delegation made under paragraph (1), except that this will not apply where the right to file an application for review has been precluded by a rule or order, adopted under paragraph (4), limiting the right to file applications for review. This paragraph also specifies the method for computing the time within which petitions for judicial review must be filed.

Paragraph (8) provides that the secretary and seal of the Commission shall be the secretary and seal of each panel of the Commission, each individual Commissioner, and each employee board or individual employee exercising functions delegated under paragraph (1). This is similar to a provision contained in present section 5(d)(3), except that the present provision specifies only individual Commissioners and employee boards.

SECTION 3

This section rewrites section 405 of the act to reflect the proposed changes in present law which will permit the Commission to delegate functions in adjudication cases to panels of commissioners, employee boards, or others. Under the amended section an aggrieved party may file a petition for rehearing only with the authority making the decision, which would be either the Commission itself or an authority within the Commission designated in the exercise of its authority to delegate functions.

Under present section 405 the right to petition for rehearing is with respect to a "decision, order, or requirement." The bill modifies this series of words to read "order, decision, report, or action." This is done merely to conform with the terminology used elsewhere in the bill. No change in substance is intended.

SECTION 4

This section of the bill rewrites subsections (a), (b), (c), and (d) of section 409 of the act.

Subsection (a) as now in effect is omitted entirely. The reason for this omission has been stated above in this report. Subsection (a) as contained in the bill merely repeats in substance what is presently in the first sentence of subsection (b).

The second sentence of present subsection (b), which relates to action upon exceptions filed to initial decisions of hearing officers in adjudication cases, is omitted from the subsection as it appears in the bill, but a substitute provision relating to action upon such exceptions is included. This change involves one of the most important features of the bill, and is explained in detail earlier in this report.

The last sentence of the present subsection (b), merely stating requirements which otherwise are applicable (see sec. 8(b) of the Administrative Procedure Act), has been omitted.

Subsection (c)(1) presently reads as follows:

(c)(1) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no examiner conducting or participating in the conduct of such hearing shall, except to the extent required for the disposition of ex parte matters as authorized by law, consult any person (except another examiner participating in the conduct of such hearing) on any fact or question of law in issue, unless upon notice and opportunity for all parties to participate. In the performance of his duties, no such examiner shall be responsible to or subject to the supervision or direction of any person engaged in the performance of investigative, prosecutory, or other functions for the Commission or any other agency of the Government. No examiner conducting or participating in the conduct of any such hearing shall advise or consult with the Commission or any member or employee of the Commission (except another examiner participating in the conduct of such hearing) with respect to the initial decision in the case or with respect to exceptions taken to the findings, rulings, or recommendations made in such case.

This subsection is not included in section 409 as modified by this bill. To a considerable extent it duplicates provisions of section 5(c) of the Administrative Procedure Act, and to this extent is unnecessary. To the extent that it goes beyond the Administrative Procedure Act provisions with respect to internal separation of functions, the committee feels that there is no demonstrated need to retain provisions which are not applicable to other Federal regulatory agencies. On the contrary, permitting the hearing officer to consult with other hearing officers or appropriate staff members on questions of law should result in improving the quality of initial decisions and in expediting their preparation.

Subsection (c)(1) in the bill is a modified version of subsection (c)(2) of the present law. As modified by the bill, the subsection omits the provisions which apply specifically to members of the Office of the General Counsel, the Office of the Chief Engineer, or the Office of the Chief Accountant. The reason for the omission has been explained earlier in this report. The other changes in this subsection have been made merely to reflect the changes otherwise made in relation to the Commission's power to delegate review functions.

Subsection (c)(2) in the bill is a new provision, the effect of which is to cause the provisions of section 5(c) of the Administrative Procedure Act to apply in the case of proceedings involving initial licenses, arising under the Communications Act of 1934. The reasons for including this provision are discussed earlier in this report.

Subsection (c)(3) of the present law reads as follows:

(3) No person or persons engaged in the performance of investigative or prosecuting functions for the Commission, or in any litigation before any court in any case arising under this Act, shall advise, consult, or participate in any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, except as a witness or counsel in public proceedings.

This provision is being omitted. It is similar to a provision in section 5(c) of the Administrative Procedure Act, but is somewhat more restrictive. As in other instances referred to above, it is believed that the provision in the latter act, which applies to Federal regulatory agencies generally, should apply to the Federal Communications Commission (as it will if this legislation is enacted) and that need for a different provision applicable to that agency has not been demonstrated.

Subsection (d) as contained in the bill provides that the preceding provisions of section 409 and the provisions of section 5(d) of the act, to the extent that they are in conflict with the provisions of the Administrative Procedure Act, shall supersede and modify the provisions of that act. This subsection is similar to subsection (d) in the present law except for the reference to section 5(d).

SECTION 5

This section is a "saving" provision with respect to pending proceedings.

It deals with the question of what law will apply for purposes of action on exceptions filed to a hearing officer's initial decision in any case of adjudication designated by the Commission for hearing by a

notice of hearing issued prior to the date of the enactment of this legislation.

It provides that in such cases the review provision in section 409(b) of the act, as now in force, shall continue to be applicable in such cases.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

ORGANIZATION AND FUNCTIONING OF THE COMMISSION

SEC. 5. (a) The member of the Commission designated by the President as chairman shall be the chief executive officer of the Commission. It shall be his duty to preside at all meetings and sessions of the Commission, to represent the Commission in all matters relating to legislation and legislative reports, except that any commissioner may present his own or minority views or supplemental reports, to represent the Commission in all matters requiring conferences or communications with other governmental officers, departments or agencies, and generally to coordinate and organize the work of the Commission in such manner as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission. In the case of a vacancy in the office of the chairman of the Commission, or the absence or inability of the chairman to serve, the Commission may temporarily designate one of its members to act as chairman until the cause or circumstance requiring such designation shall have been eliminated or corrected.

(b) Within six months after the enactment of the Communications Act Amendments, 1952, and from time to time thereafter as the Commission may find necessary, the Commission shall organize its staff into (1) integrated bureaus, to function on the basis of the Commission's principal workload operations, and (2) such other divisional organizations as the Commission may deem necessary. Each such integrated bureau shall include such legal, engineering, accounting, administrative, clerical, and other personnel as the Commission may determine to be necessary to perform its functions.

[(c) The Commission shall establish a special staff of employees, hereinafter in this Act referred to as the "review staff," which shall consist of such legal, engineering, accounting, and other personnel as the Commission deems necessary. The review staff shall be directly responsible to the Commission and shall not be made a part of any bureau or divisional organization of the Commission. Its work shall not be supervised or directed by any employee of the Commission other than a member of the review staff whom the Commission may designate as the head of such staff. The review staff shall perform no duties or functions other than to assist the Commission, in cases of adjudication (as defined in the Administrative Procedure Act) which have been designated for hearing, by preparing a summary of the evidence presented at any such hearing, by preparing, after an initial

decision but prior to oral argument, a compilation of the facts material to the exceptions and replies thereto filed by the parties, and by preparing for the Commission or any member or members thereof, without recommendations and in accordance with specific directions from the Commission or such member or members, memoranda, opinions, decisions, and orders. The Commission shall not permit any employee who is not a member of the review staff to perform the duties and functions which are to be performed by the review staff; but this shall not be construed to limit the duties and functions which any assistant or secretary appointed pursuant to section 4(f)(2) may perform for the commissioner by whom he was appointed.】

(d)(1) 【Except as provided in section 409, the Commission may, when necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, by order assign or refer any portion of its work, business, or functions to an individual commissioner or commissioners or to a board composed of one or more employees of the Commission, to be designated by such order for action thereon, and may at any time amend, modify, or rescind any such order of assignment or reference. Any order, decision, or report made, or other action taken, pursuant to any such order of assignment or reference shall, unless reviewed pursuant to paragraph (2), have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other action of the Commission.】 *When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or by order, delegate any of its functions to a panel of commissioners, an individual commissioner, an employee board, or an individual employee, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter. Any such rule or order may be adopted, amended, or rescinded only by a vote of a majority of the members of the Commission then holding office. Nothing in this paragraph shall authorize the Commission to provide for the conduct, by any person or persons other than persons referred to in clauses (2) and (3) of section 7(a) of the Administrative Procedure Act, of any hearing to which such section 7(a) applies.*

(2) *As used in this subsection (d) the term "order, decision, report, or action" does not include an initial, tentative, or recommended decision to which exceptions may be filed as provided in section 409(b).*

(3) *Any order, decision, report, or action made or taken pursuant to any such delegation, unless reviewed as provided in paragraph (4), shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission.*

【(2)】 (4) Any person aggrieved by any such order, decision, 【or report may】 *report, or action may file an application for review by the Commission 【,】 within such time and in such 【form】 manner as the Commission shall prescribe 【, and every such application shall be passed upon by the Commission. If the Commission grants the application, it may affirm, modify, or set aside such order, decision, report, or action, or may order a rehearing upon such order, decision, report, or action under section 405.】: Provided, That the Commission, by published rule or by order, may limit the right to file applications under this subsection for review of orders, decisions, reports, or actions of panels of commissioners or employee boards, in cases of adjudication (as*

defined in the Administrative Procedure Act), to proceedings involving issues of general communications importance. The Commission, on its own initiative, may review in whole or in part, at such time and in such manner as it shall determine, any order, decision, report, or action made or taken pursuant to any delegation under paragraph (1).

(5) In passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefor. No such application for review shall rely on questions of fact or law upon which the panel of commissioners, individual commissioner, employee board, or individual employee has been afforded no opportunity to pass.

(6) If the Commission grants the application for review, it may affirm, modify, or set aside the order, decision, report, or action, or it may order a rehearing upon such order, decision, report, or action in accordance with section 405.

(7) Unless exercise of the right to file an application for review has been precluded by a rule or order adopted under paragraph (4), the filing of an application for review under this subsection shall be a condition precedent to judicial review of any order, decision, report, or action made or taken pursuant to a delegation under paragraph (1). The time within which a petition for review must be filed in a proceeding to which section 402(a) applies, or within which an appeal must be taken under section 402(b), shall be computed from the date upon which public notice is given of orders disposing of all applications for review filed in any case.

[(3)] (8) The Secretary and seal of the Commission shall be the secretary and seal of each [individual commissioner or board] panel of the Commission, each individual commissioner, and each employee board or individual employee exercising functions delegated pursuant to paragraph (1) of this subsection.

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REHEARINGS [BEFORE COMMISSION]

SEC. 405. After [a decision, order, or requirement has been made by the Commission in any proceeding] an order, decision, report, or action has been made or taken in any proceeding by the Commission, or by any designated authority within the Commission pursuant to a delegation under section 5(d)(1), any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for rehearing only to the authority making or taking the order, decision, report, or action; and it shall be lawful for such authority, whether it be the Commission or other authority designated under section 5(d)(1), in its discretion, to grant such a rehearing if sufficient reason therefor be made to appear. [Petitions] A petition for rehearing must be filed within thirty days from the date upon which public notice is given of [any decision, order, or requirement] the order, decision, report, or action complained of. No such application shall excuse any person from complying with or obeying any [decision, order, or requirement] order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such [decision, order, or requirement] order, decision, report, or action, except where the party seeking such review (1) was not a party to the proceedings resulting in such [decision, order, or

requirement] *order, decision, report, or action*, or (2) relies on questions of fact or law upon which the [Commission has] *Commission, or designated authority within the Commission, has been afforded no opportunity to pass*. The [Commission shall] *Commission, or designated authority within 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. Rehearings shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any rehearing. The time within which a petition for review must be filed in a proceeding to which section 402(a) applies, or within which an appeal must be taken under section 402(b) in any case, shall be computed from the date upon which public notice is given of orders disposing of all petitions for rehearing filed [in any case, but any decision, order, or requirement] with the Commission in such proceeding or case, but any order, decision, report, or action made or taken after such rehearing reversing, changing, or modifying the original order shall be subject to the same provisions with respect to rehearing as an original order.*

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GENERAL PROVISIONS RELATING TO PROCEEDINGS—WITNESSES AND DEPOSITIONS

SEC. 409. (a) In every case of adjudication (as defined in the Administrative Procedure Act) which has been designated [for a hearing by the Commission, the hearing shall be conducted by the Commission or by one or more examiners provided for in section 11 of the Administrative Procedure Act, designated by the Commission.] *by the Commission for hearing, the person or persons conducting the hearing shall prepare and file an initial, tentative, or recommended decision, except where such person or persons become unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision.*

(b) [The officer or officers conducting a hearing to which subsection (a) applies shall prepare and file an initial decision, except where the hearing officer becomes unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision. In all such cases the Commission shall permit the filing of exceptions to such initial decision by any party to the proceeding and shall, upon request, hear oral argument on such exceptions before the entry of any final decision, order, or requirement. All decisions, including the initial decision, shall become a part of the record and shall include a statement of (1) findings and conclusions, as well as the basis therefor, upon all material issues of fact, law, or discretion, presented on the

record; and (2) the appropriate decision, order, or requirement.】 *In every case of adjudication (as defined in the Administrative Procedure Act) which has been designated by the Commission for hearing, any party to the proceeding shall be permitted to file exceptions and memoranda in support thereof to the initial, tentative, or recommended decision, which shall be passed upon by the Commission or by the authority within the Commission, if any, to whom the function of passing upon the exceptions is delegated under section 5(d)(1).*

【(c)(1) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no examiner conducting or participating in the conduct of such hearing shall, except to the extent required for the disposition of ex parte matters as authorized by law, consult any person (except another examiner participating in the conduct of such hearing) on any fact or question of law in issue, unless upon notice and opportunity for all parties to participate. In the performance of his duties, no such examiner shall be responsible to or subject to the supervision or direction of any person engaged in the performance of investigative, prosecutory, or other functions for the Commission or any other agency of the Government. No examiner conducting or participating in the conduct of any such hearing shall advise or consult with the Commission or any member or employee of the Commission (except another examiner participating in the conduct of such hearing) with respect to the initial decision in the case or with respect to exceptions taken to the findings, rulings, or recommendations made in such case.】

【(2)】 (c)(1) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated 【for a hearing】 by the Commission *for a hearing*, no person who has participated in the presentation or preparation for presentation of such case 【before an examiner or examiners or the Commission, and no member of the Office of the General Counsel, the Office of the Chief Engineer, or the Office of the Chief Accountant】 *at the hearing or upon review* shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case *to the hearing officer or officers or, upon review, to the Commission or to any authority within the Commission to whom, in such case, review functions have been delegated by the Commission under section 5(d)(1)*, unless upon notice and opportunity for all parties to participate.

(2) *The provision in subsection (c) of section 5 of the Administrative Procedure Act which states that such subsection shall not apply in determining applications for initial licenses, shall not be applicable hereafter in the case of applications for initial licenses before the Federal Communications Commission.*

【(3) No person or persons engaged in the performance of investigative or prosecuting functions for the Commission, or in any litigation before any court in any case arising under this Act, shall advise, consult, or participate in any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, except as a witness or counsel in public proceedings.】

(d) To the extent that the foregoing provisions of this section *and section 5(d)* are in conflict with the provisions of the Administrative Procedure Act, such provisions of this section *and section 5(d)* shall be held to supersede and modify the provisions of 【the】 *that Act.*

APPENDIX

For the information of the House, there are set forth below provisions of section 2 (c) and (d), section 5(c), and section 7(a) of the Administrative Procedure Act:

ADMINISTRATIVE PROCEDURE ACT

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DEFINITIONS

SEC. 2. As used in this Act—

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(c) **RULE AND RULE MAKING.**—"Rule" means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. "Rule making" means agency process for the formulation, amendment, or repeal of a rule.

(d) **ORDER AND ADJUDICATION.**—"Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

ADJUDICATION

SEC. 5.

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(c) **SEPARATION OF FUNCTIONS.**—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. [No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as

witness or counsel in public proceedings.) This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

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HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) PRESIDING OFFICERS.—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

