

PETITIONS FOR INTERVENTION BEFORE THE FEDERAL COMMUNICATIONS COMMISSION TO BE FILED WITHIN 30 DAYS AFTER PUBLICATION OF THE HEARING ISSUES

APRIL 27, 1964.—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 Commerce, submitted the following

REPORT

[To accompany S. 1193]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1193) to amend section 309(e) of the Communications Act of 1934, as amended (47 U.S.C. 309(e)), to require that petitions for intervention be filed not more than 30 days after publication of the hearing issues in the Federal Register, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF LEGISLATION

The purpose of S. 1193 is to amend section 309(e) of the Communications Act of 1934, as amended (47 U.S.C. 309(e)), to require a party in interest who wishes to intervene in a hearing to signify his intention to do so not more than 30 days after publication of the hearing issues, or any substantial amendment thereto, in the Federal Register.

Under the present provisions of the act, when an application has been designated for hearing, any party in interest who has not been notified of the designation for hearing can acquire the status of a party to the proceeding by filing a petition for intervention showing the basis for his interest at any time not less than 10 days prior to the actual start of the hearing. According to the Commission, the present procedure which permits filings up until 10 days prior to the date of the hearing has interfered with the expeditious handling and disposition of hearing cases.

REASONS FOR LEGISLATION

This bill was introduced at the request of the Federal Communications Commission. A hearing thereon was held on February 20, 1964, at which Commissioner Rosel H. Hyde testified in support of the proposal. No witness appeared in opposition to the bill.

The Commission contends that the enactment of S. 1193 will enhance the effectiveness of prehearing conferences which constitute one of the chief techniques for expediting formal hearings. Experience shows that prehearing discussions and negotiations, and the stipulations and agreements of the parties reached as a result thereof, are an effective means of expediting hearings and keeping hearing records down to the minimum size consistent with the rights of the participants.

Because present law permits intervention up to 10 days before a hearing actually starts, stipulations and agreements which may have been reached in such conferences by other participants may become useless because an additional intervenor becomes a party to the case at a late date.

Under the provisions of S. 1193, once the hearing issues are published by the Federal Communications Commission, any interested person has an opportunity to determine within 30 days whether he will have to participate in the hearing to protect his own interest. The Commission feels that requiring parties in interest to intervene within 30 days after the publication of the hearing issues is an ample and reasonable period to afford parties to determine whether it is necessary for them to intervene. Interested bar associations have not interposed any objection.

The 30-day period provided in the proposal is consistent with the time allowed in many other sections of the Communications Act. For example, section 402(e) allows interested persons to intervene in appeals from Commission decisions within 30 days after the filing of any such appeal with the court of appeals. (See also secs. 402(c) and 405.)

This legislation will discourage dilatory tactics now possible under the present provisions and will substantially eliminate the need for holding repeated prehearing conferences. It will also have the virtue of providing a date certain for intervention, thus eliminating the present situation where the date for intervention changes every time the date for commencement of the hearing is changed. Thus, adoption of this legislation will be another step in eliminating delays and backlogs in the administrative process.

AGENCY REPORTS

Departmental reports have not been requested on S. 1193 but such reports have been received on an identical House bill H.R. 5327. The reports are as follows.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., May 28, 1963.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
Longworth House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on H.R. 5327, a bill to amend section 309(e) of the Communications Act of 1934 to require that petitions for intervention be filed not more than 30 days after publication of the hearing issues in the Federal Register.

In its explanation of the draft bill that became H.R. 5327, the Federal Communications Commission has pointed out that existing language in section 309(e) permits any party in interest, who has not been notified of the designation of an application for hearing, to acquire the status of a party to the proceeding by filing a petition for intervention "* * *" at any time not less than 10 days prior to the date of hearing." H.R. 5327 would require instead that petitions for intervention be filed not more than 30 days after publication of the hearing issues. This would provide a date certain for intervention and thus eliminate the present situation where the date for intervention changes every time the date of hearing is changed. The bill is designed to discourage dilatory tactics now possible under section 309(e) and to eliminate the need for holding repeated prehearing conferences. The net result will be to speed up Commission proceedings.

Accordingly, the Bureau recommends enactment of H.R. 5327.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., April 16, 1963.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN HARRIS: This will acknowledge receipt of your letter of April 3, enclosing for the Commission's comments H.R. 5327, a bill to amend section 309(e) of the Communications Act of 1934 to require that petitions for intervention be filed not more than 30 days after publication of the hearing issues in the Federal Register.

This bill is part of the Commission's legislative program for the 1st session of the 88th Congress and was transmitted to the Speaker of the House on March 14, 1963. We have no further comment to make other than that contained in our memorandum of explanation which accompanied our proposal, a copy of which is enclosed.

Sincerely yours,

NEWTON N. MINOW, *Chairman.*

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 309(e)
OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, TO
REQUIRE THAT PETITIONS FOR INTERVENTION BE FILED
WITHIN 30 DAYS AFTER PUBLICATION OF THE HEARING
ISSUES

Delays in the administrative process are of serious concern to the public, the bar, administrative agencies, and the Congress. In order to promote efficiency, the Commission has been seeking methods of expediting its administrative process while at the same time balancing the requirement of protecting the public interest with its duty to also safeguard the rights of private parties. One of the areas in which undue delay seems to be a special problem is in the hearing process. The Commission's legislative proposal herein is one which it believes will reduce undue delay.

When an application is filed with the Commission, it must be processed to determine what action thereon would be appropriate. Basically, this processing consists of examining an application to determine whether it is complete and whether the applicant is legally, technically, and financially qualified. Assuming that he meets these minimal qualifications and there is no reason for a hearing, the Commission can grant the application without a hearing. But if the applicant's qualifications can be determined only after a hearing, or if some other reason exists, then the Commission is required by section 309(e) of the Communications Act to designate the application for a full hearing, specifying with particularity the grounds and reasons for such hearing.

When an application has been designated for hearing under section 309(e), any party in interest who has not been notified of the designation for hearing can acquire the status of a party to the proceeding by filing a petition for intervention showing the basis for his interest "* * * at any time not less than 10 days prior to the date of hearing." This procedure has interfered with the expeditious handling and disposition of hearing proceedings.

The Commission's proposed amendment to section 309(e) would require a party in interest who wishes to intervene in a hearing to signify his intention to do so "* * * not more than 30 days after publication of the hearing issues, or any substantial amendment thereto, in the Federal Register."

This amendment will enhance the effectiveness of the prehearing conference which is one of the chief techniques the Commission has for expediting formal hearings. The Commission is particularly concerned that prehearing conferences be utilized to the fullest extent possible in every proceeding, to the end that there may be no unnecessary delays in the progress of a formal hearing once it is commenced. Our experience has been that prehearing discussions and negotiations, and the stipulations and agreements of the parties reached as a result thereof, are an effective means of insuring, not only an expeditious hearing, but, as well, that the hearing record may be kept down in size to the minimum consistent with the rights of the participants. Obviously, the effective-

ness of all prehearing techniques is destroyed when a party in interest, who as of right may be allowed to take part in the formal hearing if he seeks intervention 10 days before commencement thereof, may completely nullify the effect of valuable stipulations and timesaving agreements reached by the other participants during several prehearing conferences held over a period of months, simply because he did not become a party to the case at an earlier date.

Once the hearing issues are published, any interested person knows at the time whether he will have to participate in the hearing to protect his own interests. There is no reason why parties should be given the legal right to delay their intervention when the issues are clear in advance of the hearing. The Commission feels that by requiring a party in interest to intervene within 30 days of publication of the hearing issues, an ample and reasonable period is afforded to parties to determine whether it is necessary for them to intervene to protect their interests and to indicate their intention to participate. The requirement will discourage the dilatory tactics now possible under the present provisions of section 309(e) and will substantially eliminate the need for holding repeated prehearing conferences. It will also have the virtue of providing a date certain for intervention, thus eliminating the present situation where the date for intervention changes every time the date for commencement of the hearing is changed.

The 30-day period provided in the proposal is consistent with the time allowed in many other sections of the Communications Act. For example, section 402(e) allows interested persons to intervene in appeals from Commission decisions within 30 days after the filing of any such appeal with the court of appeals. (See also secs. 402(c) and 405.) In addition, the 30-day time period takes into consideration the time necessary to comply with the requirement of section 311 of the act that local notice must be given of designation for hearing in broadcast proceedings.

We also wish to point out that section 309(e) deals only with the time within which parties in interest can intervene as of right. The Commission has the discretion to permit intervention by any person (including parties in interest) at any time (even after the period specified in the section or in the Commission's rules) where a showing of good cause and that the public interest would be served thereby, is made. (See sections 4(j), 303(r) of the act; section 1.104(d) of the Commission's rules, 47 C.F.R. 1.104(d).) This discretion to permit intervention after the time specified in section 309(e), either on the Commission's own motion or on petition, would be equally true under the proposed amendment. Moreover, in any matter in which the hearing issues are substantially amended, it will be possible for new parties to intervene as of right if the changes affect their interests.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

COMMUNICATIONS ACT OF 1934, AS AMENDED

ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO
LICENSES

SEC. 309. (a) * * *.

(b) * * *.

(c) * * *.

(d) * * *.

(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.] *not more than thirty days after publication of the hearing issues or any substantial amendment thereto in the Federal Register.* 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.

