

Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon said licensee, permittee, or person to appear before the Commission at a time and place stated in the order, but in no event less than thirty days after the receipt of such order, and give evidence upon the matter specified therein; except that where safety of life or property is involved, the Commission may provide in the order for a shorter period. If after hearing, or a waiver thereof, the Commission determines that an order of revocation or a cease and desist order should issue, it shall issue such order, which shall include a statement of the findings of the Commission and the grounds and reasons therefor and specify the effective date of the order, and shall cause the same to be served on said licensee, permittee, or person.

(d) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission.

(e) The provisions of section 9(b) of the Administrative Procedure Act which apply with respect to the institution of any proceeding for the revocation of a license or permit shall apply also with respect to the institution, under this section, of any proceeding for the issuance of a cease and desist order.<sup>59</sup>

<sup>59</sup> Subsections 312(a) and 312(b) were amended to read as above by Public Law 86-752, approved September 13, 1960, 74 Stat. 889. They formerly read as follows:

#### ADMINISTRATIVE SANCTIONS

*Sec. 312. (a) Any station license or construction permit may be revoked—*

*(1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308;*

*(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application;*

*(3) for willful or repeated failure to operate substantially as set forth in the license;*  
*(4) for willful or repeated violation of, or willful or repeated failure to observe any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States; and*

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

*(b) Where any person (1) has failed to operate substantially as set forth in a license or (2) has violated or failed to observe any of the provisions of this Act 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 the Commission may order such person to cease and desist from such action.*

Before it was amended by the Communications Act Amendments, 1952, the original Section 312 read as follows:

#### REVOCATION OF LICENSES

*Sec. 312. (a) Any station license may be revoked for false statements either in the application or in the statement of fact which may be required by section 308 hereof, or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application, or for failure to operate substantially as set forth in the license, or for violation of or failure to observe any of the restrictions and conditions of this Act or of any regulation of the Commission authorized by this Act or by a treaty ratified by the United States: Provided, however, That no such order of revocation shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed revocation, has been given to the licensee. Such licensee may make written application to the Commission at any time within said fifteen days for a hearing upon such order, and upon the filing of such written application said order of revocation shall stand suspended until the conclusion of the hearing conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of revocation.*

*(b) Any station license hereafter granted under the provisions of this Act or the construction permit required hereby and hereafter issued, may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with: Provided, however, That no such order of modification shall become final until the holder of such outstanding license or permit shall have been notified in writing of the proposed action and the grounds or reasons therefor and shall have been given*

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

SEC. 313. (a) All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: *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.<sup>60</sup>

## PRESERVATION OF COMPETITION IN COMMERCE

SEC. 314. After the effective date of this Act no person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire energy, communications, or signals by radio in accordance with the terms of the license issued under this Act, shall by purchase, lease, construction, or otherwise, directly or indirectly, acquire, own, control, or operate any cable or wire telegraph or telephone line or system between any place in any State, Territory, or possession of the United States or in the Dis-

<sup>60</sup> Section 313 was amended to read as above by Public Law 86-752, approved September 13, 1960; 74 Stat. 859. It formerly read as follows:

## APPLICATION OF ANTITRUST LAWS

*Sec. 313. All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: Provided, however, That such licensee shall have the same right of appeal or review, as is provided*

trict of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any interest in the physical property and/or other assets of any such cable, wire, telegraph, or telephone line or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce; nor shall any person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire messages by any cable, wire, telegraph, or telephone line or system (a) between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any other State, Territory, or possession of the United States; or (b) between any place in any State, Territory, or possession of the United States, or the District of Columbia, and any place in any foreign country, by purchase, lease, construction, or otherwise, directly or indirectly acquire, own, control, or operate any station or the apparatus therein, or any system for transmitting and/or receiving radio communications or signals between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share of any interest in the physical property and/or other assets of any such radio station, apparatus, or system, if in either case, the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce.

#### FACILITIES FOR CANDIDATES FOR PUBLIC OFFICE

##### SEC. 315.

(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

- (1) bona fide newscast,
- (2) bona fide news interview,
- (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
- (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall

be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.<sup>61</sup>

#### MODIFICATION BY COMMISSION OF CONSTRUCTION PERMITS OR LICENSES

SEC. 316. (a) Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall have been given reasonable opportunity, in no event less than thirty days, to show cause by public hearing, if requested, why such order of modification should not issue: *Provided*, That where safety of life or property is involved, the Commission may by order provide for a shorter period of notice.

(b) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the intro-

<sup>61</sup> Public Law 86-677, approved August 24, 1960, 74 Stat. 554, suspended the equal opportunity provision of Sec. 315(a) for the period of the 1960 Presidential and Vice Presidential campaigns with respect to nominees for the offices of President and Vice President of the United States. It provided:

*That that part of section 315(a) of the Communications Act of 1934, as amended, which requires any licensee of a broadcast station who permits any person who is a legally qualified candidate for any public office to use a broadcasting station to afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, is suspended for the period of the 1960 presidential and vice presidential campaigns with respect to nominees for the offices of President and Vice President of the United States. Nothing in the foregoing shall be construed as relieving broadcasters from the obligation imposed upon them under this Act to operate in the public interest.*

(2) The Federal Communications Commission shall make a report to the Congress, not later than March 1, 1961, with respect to the effect of the provisions of this joint resolution and any recommendations the Commission may have for amendments to the Communications Act of 1934 as a result of experience under the provisions of this joint resolution.

Section 315(a) was amended to read as above by Public No. 274, 86th Cong., 1st Sess., approved September 14, 1959, 73 Stat. 557. It formerly read as follows:

#### FACILITIES FOR CANDIDATES FOR PUBLIC OFFICE

Sec. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.

Before it was amended by the Communications Act Amendments, 1962, the original Section 315 read as follows:

#### FACILITIES FOR CANDIDATES FOR PUBLIC OFFICE

Sec. 315. If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, and the Commission shall make rules and regulations to carry this provision into effect: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.

duction of evidence and the burden of proof shall be upon the Commission.<sup>62</sup>

#### 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 does not require the broadcasting of such announcement.

<sup>62</sup> This section was added by the Communications Act Amendments, 1952. The original section 316 of the Communications Act of 1934 was repealed and recodified as Section 1304 of the Criminal Code, 18 U.S.C. 1304, by "An Act to revise, codify and enact into positive law title 18 of the United States Code, entitled 'Crimes and Criminal Procedure,'" Public No. 772, 80th Cong., 2d Session, approved June 25, 1948, effective September 1, 1948. The text of Sec. 316 was as follows:

"Section 316. No person shall broadcast by means of any radio station for which a license is required by any law of the United States, and no person operating any such station shall knowingly permit the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes. Any person violating any provision of this section shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned not more than one year, or both, for each and every day during which such offense occurs."

§ 1304 Public No. 772, 80th Congress, 2nd Session reads as follows: "§ 1304. Broadcasting Lottery Information. Whoever broadcasts by means of any radio station for which a license is required by any law of the United States, or whoever operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part of all of such prizes shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Each

(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.<sup>63</sup>

#### OPERATION OF TRANSMITTING APPARATUS

SEC. 318. The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Act shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission: *Provided, however,* That the Commission if it shall find that the public interest, convenience, or necessity will be served thereby may waive or modify the foregoing provisions of this section for the operation of any station except (1) stations for which licensed operators are required by international agreement, (2) stations for which licensed operators are required for safety purposes, (3) stations engaged in broadcasting (other than those engaged solely in the function of rebroadcasting the signals of television broadcast stations and (4) stations operated as common carriers on frequencies below thirty thousand kilocycles: *Provided further,* That the Commission shall have power to make special regulations governing the granting of licenses for the use of automatic radio devices and for the operation of such devices.<sup>64</sup>

#### CONSTRUCTION PERMITS

SEC. 319. (a) No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission. The application for a construction permit shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate the station, the ownership and location of the proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information

<sup>63</sup> Section 317 was amended to read as above by Public Law 86-752, 86th Cong., 1st Sess., approved September 13, 1960, 74 Stat. 880. It formerly read as follows:

#### 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 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.*

<sup>64</sup> Subsection (3) was amended to read as above by Public Law 86-609, approved July 7, 1960, 74 Stat. 363. It formerly read: (3) *stations engaged in broadcasting, and \* \* \** This section was amended to read as above by "An Act to amend section 318 of the Communications Act of 1934." Public No. 26, 75th Congress, approved and effective Mar. 29, 1937; 50 Stat. 56. The section formerly read as follows:

*Sec. 318. The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Act shall be carried on only by a person holding an operator's license issued hereunder. No person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission.*

as the Commission may require. Such application shall be signed by the applicant under oath or affirmation.

(b) Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee.<sup>65</sup>

(c) Upon the completion of any station for the construction or continued construction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit. The provisions of section 309 (a), (b), (c), (d), (e), (f), and (g) shall not apply with respect any station license the issuance of which is provided for and governed by the provisions of this subsection.<sup>66</sup>

(d) A permit for construction shall not be required for Government stations, amateur stations, or mobile stations. With respect to stations or classes of stations other than Government stations, amateur stations, mobile stations, and broadcasting stations, the Commission may waive the requirement of a permit for construction if it finds that the public interest, convenience, or necessity would be served thereby: *Provided, however,* That such waiver shall apply only to stations whose construction is begun subsequent to the effective date of the waiver.<sup>67</sup> If the Commission finds that the public interest, convenience, and necessity would be served thereby, it may waive the re-

<sup>65</sup> The last sentence of this subsection, reading as follows:

*A permit for construction shall not be required for Government stations, amateur stations, or stations upon mobile vessels, railroad rolling stock, or aircraft.* was deleted by Public No. 321, 83d Congress, 2d Session approved March 26, 1954, 68 Stat. 35. The latter Act also added subsection (d) to section 319.

<sup>66</sup> Public Law 86-752, approved September 13, 1960, 14 Stat. 889, amended the third sentence of subsection (c) by striking out "and (e)" and inserting in lieu thereof "(c), (d), (e), (f), and (g)." Such amendment to take effect ninety days after the date of enactment of this Act.

<sup>67</sup> This section was amended to read as above by the Communications Act Amendments, 1952, and by Public No. 321, 83d Congress, 2d Session, approved March 26, 1954, 68 Stat. 35. It formerly read, as follows:

#### CONSTRUCTION PERMITS

*Sec. 319 (a) No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission upon written application therefor. The Commission may grant such permit if public convenience, interest, or necessity will be served by the construction of the station. This application shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate the station, the ownership and location of the proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information as the Commission may require. Such application shall be signed by the applicant under oath or affirmation.*

*(b) Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide*

quirement of a permit for construction of a station that is engaged solely in rebroadcasting television signals if such station was constructed on or before the date of enactment of this sentence.<sup>68</sup>

#### DESIGNATION OF STATIONS LIABLE TO INTERFERE WITH DISTRESS SIGNALS

SEC. 320. The Commission is authorized to designate from time to time radio stations the communications or signals of which, in its opinion, are liable to interfere with the transmission or reception of distress signals of ships. Such stations are required to keep a licensed radio operator listening in on the frequencies designated for signals of distress and radio communications relating thereto during the entire period the transmitter of such station is in operation.

#### DISTRESS SIGNALS AND COMMUNICATIONS

SEC. 321. (a) The transmitting set in a radio station on shipboard may be adjusted in such a manner as to produce a maximum of radiation, irrespective of the amount of interference which may thus be caused, when such station is sending radio communications or signals of distress and radio communications relating thereto.

(b) All radio stations, including Government stations and stations on board foreign vessels when within the territorial waters of the United States, shall give absolute priority to radio communications or signals relating to ships in distress; shall cease all sending on frequencies which will interfere with hearing a radio communication or signal of distress, and, except when engaged in answering or aiding the ship in distress, shall refrain from sending any radio communications or signals until there is assurance that no interference will be caused with the radio communications or signals relating thereto, and shall assist the vessel in distress, so far as possible, by complying with its instructions.<sup>69</sup>

#### INTERCOMMUNICATION IN MOBILE SERVICE

SEC. 322. Every land station open to general public service between the coast and vessels or aircraft at sea shall, within the scope of its normal operations, be bound to exchange radio communications

*that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee. The rights under any such permit shall not be assigned or otherwise transferred to any person without the approval of the Commission. A permit for construction shall not be required for Government stations, amateur stations, or stations upon mobile vessels, railroad rolling stock, or aircraft. Upon the completion of any station for the construction or continued construction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit.*

<sup>68</sup> The last sentence of subsection (d) was added by Public Law 86-609, approved July 7, 1960, 74 Stat. 363.

<sup>69</sup> This section was amended to read as above by "An Act to amend the Communications Act of 1934, etc." Public No. 97, 75th Congress, approved and effective May 20, 1937; 50 Stat. 191. Section 321(a) formerly read as follows:

*Sec. 321. (a) Every radio station on shipboard shall be equipped to transmit radio communications or signals of distress on the frequency specified by the Commission, with apparatus capable of transmitting and receiving messages over a distance of at least one hundred miles by day or night. When sending radio communications or signals of distress and radio communications relating thereto the transmitting set may be adjusted in such a manner as to produce a maximum of radiation irrespective of the amount of interference which may thus be caused.*



or signals with any ship or aircraft station at sea; and each station on shipboard or aircraft at sea shall, within the scope of its normal operations, be bound to exchange radio communications or signals with any other station on shipboard or aircraft at sea or with any land station open to general public service between the coast and vessels or aircraft at sea: *Provided*, That such exchange of radio communication shall be without distinction as to radio systems or instruments adopted by each station.<sup>70</sup>

#### INTERFERENCE BETWEEN GOVERNMENT AND COMMERCIAL STATIONS

SEC. 323. (a) At all places where Government and private or commercial radio stations on land operate in such close proximity that interference with the work of Government stations cannot be avoided when they are operating simultaneously, such private or commercial stations as do interfere with the transmission or reception of radio communications or signals by the Government stations concerned shall not use their transmitters during the first fifteen minutes of each hour, local standard time.

(b) The Government stations for which the above-mentioned division of time is established shall transmit radio communications or signals only during the first fifteen minutes of each hour, local standard time, except in case of signals or radio communications relating to vessels in distress and vessel requests for information as to course, location, or compass direction.

#### USE OF MINIMUM POWER

SEC. 324. In all circumstances, except in case of radio communications or signals relating to vessels in distress, all radio stations, including those owned and operated by the United States, shall use the minimum amount of power necessary to carry out the communication desired.

#### FALSE DISTRESS SIGNALS; REBROADCASTING; STUDIOS OF FOREIGN STATIONS

SEC. 325. (a) No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto, nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

(b) No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so

<sup>70</sup> See note 68, Section 322 formerly read as follows:

*Sec. 322. Every land station open to general public service between the coast and vessels at sea shall be bound to exchange radio communications or signals with any ship station without distinction as to radio systems or instruments adopted by such stations, respectively, and each station on shipboard shall be bound to exchange radio communications or signals with any other station on shipboard without distinction as to radio systems or instruments adopted by each station.*

located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.

(c) Such application shall contain such information as the Commission may by regulation prescribe, and the granting or refusal thereof shall be subject to the requirements of section 309 hereof with respect to applications for station licenses or renewal or modification thereof, and the license or permission so granted shall be revocable for false statements in the application so required or when the Commission, after hearings, shall find its continuation no longer in the public interest.

#### CENSORSHIP; INDECENT LANGUAGE

SEC. 326. Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.<sup>71</sup>

#### USE OF NAVAL STATIONS FOR COMMERCIAL MESSAGES

SEC. 327. The Secretary of the Navy is hereby authorized, unless restrained by international agreement, under the terms and conditions and at rates prescribed by him, which rates shall be just and reasonable, and which, upon complaint, shall be subject to review and revision by the Commission, to use all radio stations and apparatus, wherever located, owned by the United States and under the control of the Navy Department, (a) for the reception and transmission of press messages offered by any newspaper published in the United States, its Territories or possessions, or published by citizens of the United States in foreign countries, or by any press association of the United States, and (b) for the reception and transmission of private commercial messages between ships, between ship and shore, between localities in Alaska and between Alaska and the continental United States: *Provided*, That the rates fixed for the reception and transmission of all such messages, other than press messages between the Pacific coast of the United States, Hawaii, Alaska, Guam, American Samoa,<sup>72</sup> and the Orient, and between the United States and the Virgin Islands, shall not be less than the rates charged by privately owned and operated stations for like messages and service: *Provided further*, That the right to use such stations for any of the purposes named in this section shall terminate and cease as between any countries or localities or between any locality and privately operated ships whenever privately owned and operated stations are capable of meeting the normal communication requirements between such countries or localities or between any locality and privately operated ships, and the Commission shall have notified the Secretary of the Navy thereof.

<sup>71</sup> The last sentence of Sec. 326 was repealed and recodified as § 1464 of the Criminal Code 18 U.S.C. 1464 by "An Act to revise, codify and enact into positive law title 18 of the United States Code, entitled 'Crimes and Criminal Procedure'", Public No. 772, 80th Cong., 2nd Session, approved June 25, 1948, effective September 1, 1948. The last sentence of Section 326 was as follows: "No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language, by means of radio communication."

§ 1464. Public No. 772, 80th Cong. 2d Session reads as follows: "§ 1464. Broadcasting Obscene Language. Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than \$10,000 or imprisoned not more than

SPECIAL PROVISION AS TO CANAL ZONE<sup>72</sup>

SEC. 328. This title shall not apply to the Canal Zone. In international radio matters the Canal Zone shall be represented by the Secretary of State.<sup>73</sup>

## ADMINISTRATION OF RADIO LAWS IN TERRITORIES AND POSSESSIONS

SEC. 329.<sup>74</sup> The Commission is authorized to designate any officer or employee of any other department of the Government on duty in any Territory or possession of the United States to render therein such service in connection with the administration of this Act as the Commission may prescribe and also to designate any officer or employee of any other department of the Government to render such services at any place within the United States in connection with the administration of title III of this Act as may be necessary: *Provided*, That such designation shall be approved by the head of the department in which such person is employed.

PART II<sup>75</sup>—RADIO EQUIPMENT AND RADIO OPERATORS ON BOARD SHIP

## SHIP RADIO INSTALLATIONS AND OPERATIONS

SEC. 351.<sup>76</sup> (a) Except as provided in Section 352 hereof it shall be unlawful—

(1) For any ship of the United States, other than a cargo ship of less than five hundred gross tons, to be navigated in the open sea outside of a harbor or port, or for any ship of the United States or any foreign country, other than a cargo ship of less than five hundred gross tons, to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with an efficient radio installation in operating condition in charge of and operated by a qualified operator or operators, adequately installed and protected so as to insure proper operation, and so as not to endanger the ship and radio installation, as hereinafter provided, and

<sup>72</sup> See note 2.

<sup>73</sup> See note 2.

<sup>74</sup> See note 69.

Section 329 formerly read as follows:

Sec. 329. The Commission is authorized to designate any officer or employee of any other department of the Government on duty in any Territory or possession of the United States other than the Philippine Islands and the Canal Zone, to render therein such services in connection with the administration of the radio laws of the United States as the Commission may prescribe: *Provided*, That such designation shall be approved by the head of the department in which such person is employed.

<sup>75</sup> This part (secs. 351-362) was added by "An Act to amend the Communications Act of 1934, etc." Public No. 97, 75th Cong., approved and effective May 20, 1937; 50 Stat. 192-197.

<sup>76</sup> Sec. 351 (a) was amended to read, as above, by Public Law 584, 83d Cong. 2d Sess. approved August 13, 1954, 68 Stat. 1704 subsec. (a) formerly read, as follows:

Sec. 351. (a) Except as provided in section 352 hereof, it shall be unlawful—  
(1) For any ship of the United States, other than a cargo ship of less than sixteen hundred gross tons, to be navigated in the open sea outside of a harbor or port, or for any ship of the United States or any foreign country, other than a cargo ship of less than sixteen hundred gross tons, to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with an efficient radio installation in operating condition, in charge of and operated by a qualified operator or operators, adequately installed and protected so as to insure proper operations, and so as not to endanger the ship and radio installation, as hereinafter provided, and in the case of a ship of the United States, unless there is on board a valid station license issued in accordance with this Act;

(2) For any passenger ship of the United States of five thousand gross tons, or over, to be navigated outside of a harbor or port, in the open sea, or for any such ship of the United States or any foreign country to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with an efficient radio direction finder apparatus (radio compass) properly adjusted in operating condition as here-

in the case of a ship of the United States, unless there is on board a valid station license issued in accordance with this Act: *Provided*, That the Commission may defer the application of the provisions of this section for a period not beyond January 1, 1955, with respect to cargo ships of less than sixteen hundred gross tons not subject to the radio requirements of the Safety Convention when it is found impracticable to obtain or install equipment necessary for compliance therewith;

(2) For any ship of the United States of sixteen hundred gross tons, or over, to be navigated outside of a harbor or port, in the open sea, or for any such ship of the United States or any foreign country to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with an efficient radio direction finding apparatus (radio compass) properly adjusted in operating condition as hereinafter provided, which apparatus is approved by the Commission: *Provided*, That the Commission may defer the application of the provisions of this section with respect to radio direction finding apparatus to a ship or ships between one thousand six hundred and five thousand gross tons for a period not beyond November 19, 1954, if it is found impracticable to obtain or install such direction finding apparatus.

(b) A ship which is not subject to the provisions of this part at the time of its departure on a voyage shall not become subject to such provisions on account of any deviation from its intended voyage due to stress of weather or any other cause over which neither the master, the owner, nor the charterer (if any) has control.

SEC. 352.<sup>77</sup> (a) The provisions of this part shall not apply to—

(1) A ship of war;

(2) A ship of the United States belonging to and operated by the Government, except a ship of the United States Maritime Commission, the Inland and Coastwise Waterways Service, or the Panama Canal Company;<sup>78</sup>

(3)<sup>79</sup> A foreign ship belonging to a country which is a party to any Safety Convention in force between the United States and that country which ship carries a valid certificate exempting said ship from the radio provisions of that Convention, or which ship conforms to the radio requirements of such Convention or Regulations and has on board a valid certificate to that effect, or which ship is not subject to the radio provisions of any such Convention;

(4) Yachts of less than six hundred gross tons not subject to the radio provisions of the Safety Convention;

(5) Vessels in tow;

(6) A vessel navigating solely on the Great Lakes, or on any bays, sounds, rivers, or protected waters within the jurisdiction of the United States, or to a vessel leaving or attempting to leave any harbor or port of the United States for a voyage solely on the Great Lakes,

<sup>77</sup> The Panama Canal Company referred to in this section was redesignated Panama Canal Company by Public No. 841, 81st Cong., 2d Sess., Approved September 26, 1950, 64 Stat. 1038.

<sup>78</sup> See note 76.

<sup>79</sup> This subsection was amended to read, as above, by Public Law 584, 83d Cong., 2d sess., approved August 18, 1954, 68 Stat. 704. This subsection formerly read as follows:

(3) A foreign ship belonging to a country which is a party to the Safety Convention and which ship carries a valid certificate exempting said ship from the radio provisions of that Convention, or which ship conforms to the radio requirements of such Convention or Regulations and has on board a valid certificate to that effect:

or on any bays, sounds, rivers, or protected waters within the jurisdiction of the United States.

(b) The Commission may, if it considers that the route or the conditions of the voyage or other circumstances are such as to render a radio installation unreasonable or unnecessary for the purposes of this part, exempt from the provisions of this part any ship, or any class of ships, which falls within any of the following descriptions:

(1) Passenger ships which in the course of their voyage do not go more than twenty nautical miles from the nearest land or more than two hundred nautical miles between two consecutive ports;

(2) Cargo ships which in the course of their voyage do not go more than one hundred and fifty nautical miles from the nearest land;

(3) Passenger vessels of less than one hundred gross tons not subject to the radio provisions of the Safety Convention;

(4) Sailing ships.

(c) If, because of unforeseeable failure of equipment, a ship is unable to comply with the equipment requirements of this part without undue delay of the ship, the mileage limitations set forth in paragraphs (1) and (2) of subsection (b) shall not apply: *Provided*, That exemption of the ship is found to be reasonable or necessary in accordance with subsection (b) to permit the ship to proceed to a port where the equipment deficiency may be remedied.

#### OPERATORS, WATCHES, AUTO-ALARM—RADIOTELEGRAPH EQUIPPED SHIPS

SEC. 353.<sup>80</sup> (a) Each cargo ship required by this part to be fitted with a radiotelegraph installation and which is not fitted with an auto-alarm, and each passenger ship required by this part to be fitted with a radiotelegraph installation, shall, for safety purposes, carry at least two qualified operators.

(b) A cargo ship, required by this part to be fitted with a radiotelegraph installation, which is fitted with an auto-alarm in accordance with this title, shall, for safety purposes, carry at least one qualified operator who shall have had at least six months' previous service in the aggregate as a qualified operator in a station on board a ship or ships of the United States.

(c) Each ship of the United States required by this part to be fitted with a radiotelegraph installation shall, while being navigated outside a harbor or port, keep a continuous watch by means of qualified operators: *Provided*, That in lieu thereof, on a cargo ship fitted with an auto-alarm in proper operating condition, a watch of at least eight hours per day, in the aggregate, shall be maintained by means of a qualified operator.

(d) The Commission shall, when it finds it necessary for safety purposes, have authority to prescribe the particular hours of watch on a ship of the United States which is required by this part to be fitted with a radiotelegraph installation.

(e) On all ships of the United States fitted with an auto-alarm, said apparatus shall be in operation at all times while the ship is being navigated outside of a harbor or port when the operator is not on watch.

<sup>80</sup> This section was amended by Public Law 584, 83d Cong., 2d sess., approved August 13, 1954, 68 Stat. 704, by adding in the heading the words "Radiotelegraph Equipped Ships", and substituting in the text "radiotelegraph installation" for "radio installation".

## OPERATORS, WATCHES—RADIOTELEPHONE EQUIPPED SHIPS

SEC. 354.<sup>81</sup> (a) Each cargo ship fitted with a radiotelephone installation in accordance with section 356 shall, for safety purposes, carry at least one qualified operator who may be a member of the crew holding only a certificate for radio telephony.

(b) Each cargo ship of the United States fitted with a radiotelephone installation in accordance with section 356 shall, while being navigated outside a harbor or port, keep a listening watch in such manner and during such periods as determined by the Commission.

## TECHNICAL REQUIREMENTS—RADIOTELEGRAPH EQUIPPED SHIPS

SEC. 355.<sup>82</sup> The radio installation and the radio direction finding apparatus required by section 351 of this part shall comply with the following requirements:

(a) The radio installation shall comprise a main and an emergency or reserve radiotelegraph installation: *Provided*, That, in the case of an existing installation on a cargo ship and a new installation on a cargo ship of five hundred gross tons and upwards but less than one thousand six hundred gross tons, if the main installation complies with all requirements of an emergency or reserve installation, the emergency or reserve installation may be omitted, except that a separate emergency receiver must, in all cases, be provided.

(b) The ship's radio operating room and the emergency or reserve installation shall be placed in the upper part of the ship in a position of the greatest possible safety and as high as practicable above the deepest load water line, and the location of such room or rooms shall be approved by the Commandant of the Coast Guard.

(c) The main and emergency or reserve installations shall be capable of transmitting and receiving on the frequencies and types of waves designated by the Commission pursuant to law for the purpose of distress and safety of navigation.

(d) The main installation shall have a normal transmitting and receiving range of at least two hundred nautical miles, that is to say, it must be capable of transmitting and receiving clearly perceptible signals from ship to ship over a range of at least two hundred nautical miles by day under normal conditions and circumstances.

(e) Sufficient power shall be available at all times to operate the main radio installation efficiently under normal conditions over the range specified in subsection (d) of this section.

(f) The emergency or reserve installation shall include a source of energy independent of the propelling power of the ship and of any other electrical system and shall be capable of being put into operation rapidly and of working for at least six continuous hours. For the

<sup>81</sup> This section was added by Public Law 584, 83d Cong., 2d sess., approved August 13, 1954, 68 Stat. 74.

<sup>82</sup> The portion of sec. 355, formerly 354, which precedes subsection (h) thereof was amended to read as above, by Public Law 584, 83d Cong., 2d sess., approved August 13, 1954, 68 Stat. 704. This portion formerly read as follows:

## TECHNICAL REQUIREMENTS

Sec. 354. The radio installation and the radio direction-finding apparatus required by section 351 of this part shall comply with the following requirements:

(a) The radio installation shall comprise a main and an emergency or reserve installation: *Provided*, however, That on a cargo ship, if the main installation complies also with all the requirements of an emergency or reserve installation, the emergency or reserve installation may be omitted.

emergency or reserve installation, the normal range as defined in subsection (d) of this section shall be at least one hundred nautical miles.

(g) There shall be provided between the bridge of the ship and the radio room, and between the bridge and the location of the direction finding apparatus, when the direction finding apparatus is not located on the bridge, an efficient means of communication independent of any other communication system of the ship.

(h) The direction finding apparatus shall be efficient and capable of receiving clearly perceptible radio signals and of taking bearings from which the true bearing and direction may be determined. It shall be capable of receiving signals on the frequencies prescribed for distress, direction finding, and radio beacons by the General Radio Regulations annexed to the International Telecommunication Convention in force and in new installations after the effective date of this part, such other frequencies as the Commission may for safety purposes designate.

#### TECHNICAL REQUIREMENTS—RADIOTELEPHONE EQUIPPED SHIPS

SEC. 356.<sup>83</sup> Cargo ships of less than sixteen hundred gross tons may, in lieu of the radiotelegraph installation prescribed by section 355, carry a radiotelephone installation meeting the following requirements:

(a) The ship's radiotelephone installation shall be in the upper part of the ship and, unless situated on the bridge, there shall be efficient communication with the bridge.

(b) The radiotelephone installation shall be capable of transmitting and receiving on the frequencies and with types of emissions designated by the Commission pursuant to law for the purpose of distress and safety of navigation.

(c) The transmitter shall be capable of transmitting clearly perceptible signals from ship to ship during daytime, under normal conditions and circumstances, over a minimum normal range of one hundred and fifty nautical miles.

(d) There shall be available at all times a source of energy sufficient to operate the installation over the normal range required by paragraph (c). If batteries are provided they shall have sufficient capacity to operate the transmitter and receiver for at least six hours continuously under normal working conditions. In new installations an emergency source of energy shall be provided in the upper part of the ship unless the main source of energy is so situated.

#### LIFEBOATS

SEC. 357.<sup>84</sup> Every ship required to be provided with lifeboat radio by treaty to which the United States is a party, by statute, or by regulation made in conformity with a treaty, convention, or statute,

<sup>83</sup> This section was added by Public Law 584, 83d Cong., 2d sess., approved August 13, 1954, 68 Stat. 704.

<sup>84</sup> This section was amended to read as above by Public Law 584, 83d Cong., 2d sess., approved August 13, 1954, 68 Stat. 704. The section formerly read, as follows:

#### LIFEBOATS

*Sec. 355. Every motor lifeboat, required to be equipped with radio by treaty or convention to which the United States is a party, by statute, or by regulation made in conformity with a treaty, convention, or statute, shall be fitted with an efficient radio installation under such rules and regulations as the Commission may find necessary to promote the safety of*

shall be fitted with efficient radio equipment appropriate to such requirement under such rules and regulations as the Commission may find necessary for safety of life. For purposes of this section, "radio equipment" shall include portable as well as nonportable apparatus.

#### APPROVAL OF INSTALLATIONS

SEC. 358.<sup>85</sup> (a) Insofar as is necessary to carry out the purposes and requirements of this part, the Commission shall have authority, for any ship subject to this part—

(1) To approve the details as to the location and manner of installations of the equipment required by this part of equipment necessitated by reason of the purposes and requirements of this part.

(2) To approve installations, apparatus, and spare parts necessary to comply with the purposes and requirements of this part.

(3) To prescribe such additional equipment as may be determined to be necessary to supplement that specified herein, for the proper functioning of the radio installation installed in accordance with this part or for the proper conduct of radio communication in time of emergency or distress.

#### TRANSMISSION OF INFORMATION

SEC. 359.<sup>86</sup> (a) The master of every ship of the United States equipped with radio transmitting apparatus, on meeting with dangerous ice, a dangerous derelict, a tropical storm, or any other direct danger to navigation, shall cause to be transmitted all pertinent information relating thereto, to ships in the vicinity and to the appropriate authorities, in accordance with rules and regulations issued by the Commission, which authorities of the United States shall, when they consider it necessary, promptly bring the information received by them to the knowledge of those concerned and foreign authorities interested.

(b) No charge shall be made by any ship or station in the mobile service of the United States for the transmission, receipt, or relay of the information designated in subsection (a) originating on a ship of the United States or of a foreign country.

(c) The transmission by any ship of the United States, made in compliance with subsection (a), to any station which imposes a charge for the reception, relay, or forwarding of the required information, shall be free of cost to the ship concerned and any communication charges incurred by the ship for transmission, relay, or forwarding of the information may be certified to the Commission for reimbursement out of moneys appropriated to the Commission for that purpose.

(d) No charge shall be made by any ship or station in the mobile service of the United States for the transmission of distress messages and replies thereto in connection with situations involving the safety of life and property at sea.

(e) Notwithstanding any other provision of law, any station or carrier may render free service in connection with situations involving the safety of life and property, including hydrographic reports, weather reports, reports regarding aids to navigation and medical



assistance to injured or sick persons on ships and aircraft at sea. All free service permitted by this subsection shall be subject to such rules and regulations as the Commission may prescribe, which rules may limit such free service to the extent which the Commission finds desirable in the public interest.

#### AUTHORITY OF MASTER

SEC. 360.<sup>86</sup> The radio installation, the operators, the regulation of their watches, the transmission and receipt of messages, and the radio service of the ship except as they may be regulated by law or international agreement, or by rules and regulations made in pursuance thereof, shall in the case of a ship of the United States be under the supreme control of the master.

#### CERTIFICATES

SEC. 361.<sup>87</sup> (a) Each vessel of the United States to which the safety convention applies shall comply with the radio and communication provisions of said convention at all times while the vessel is in use, in addition to all other requirements of law, and have on board an appropriate certificate as prescribed by the safety convention.

(b)<sup>87</sup> Appropriate certificates concerning the radio particulars provided for in said Convention shall be issued upon proper request to any vessel which is subject to the radio provisions of the Safety Convention and is found by the Commission to comply therewith. Safety Radiotelegraphy Certificates and Safety Radiotelephony Certificates, as prescribed by the said Convention, and Exemption Certificates issued in lieu of such certificates, shall be issued by the Commission. Other certificates concerning the radio particulars provided for in the said Convention shall be issued by the Commandant of the Coast Guard or whatever other agency is authorized by law to do so upon request of the Commission made after proper inspection or determination of the facts. If the holder of a certificate violates the radio provisions of the Safety Convention or the provisions of this Act, or the rules, regulations or conditions prescribed by the Commission, and if the effective administration of the Safety Convention or of this part so requires, the Commission, after hearing in accordance with law, is authorized to modify or cancel a certificate which it has issued, or to request the modification or cancellation of a certificate which has been issued by another agency upon the Commission's request. Upon receipt of such request for modification or cancellation, the Commandant of the Coast Guard, or whatever agency is

<sup>86</sup> See note 76.

<sup>87</sup> Subsection (b) was amended to read as above by Public Law 584, 83d Cong., 2d sess., approved August 13, 1954, 68 Stat. 704. This subsection formerly read, as follows:

(b) Appropriate certificates concerning the radio particulars provided for in said convention shall be issued to any vessel of the United States which is subject to the radio provisions of the safety convention and is found by the Commission to comply therewith. Such certificates shall be issued by the Commandant of the Coast Guard, or whatever other agency is authorized by law to do so, upon request of the Commission made after proper inspection or determination of the facts. If the holder of such certificate violates the provisions of the safety convention, or of this Act, or the rules, regulations, or conditions prescribed by the Commission, and if the effective administration of the safety convention or of this part so requires, the Commission, after hearing in accordance with law, is authorized to request the modification or cancellation of such certificate. Upon receipt of such request the Commandant of the Coast Guard, or whatever other agency is authorized by law to do so, shall modify or cancel the certificate in accord therewith. The Commission is authorized to issue, modify, or cancel such certificates in the event that no other agency is authorized to do so.

authorized by law to do so, shall modify or cancel the certificate in accordance therewith.

#### INSPECTION

SEC. 362.<sup>88</sup> (a) In addition to any other provisions required to be included in a radio station license, the station license of each ship of the United States subject to this title shall include particulars with reference to the items specifically required by this title.

(b) Every ship of the United States, subject to this part, shall have the equipment and apparatus prescribed therein, inspected at least once each year by the Commission. If, after such inspection, the Commission is satisfied that all relevant provisions of this Act and the station license have been complied with, the fact shall be certified to on the station license by the Commission. The Commission shall make such additional inspections at frequent intervals as may be necessary to insure compliance with the requirements of this Act.

#### CONTROL BY COMMISSION

SEC. 363.<sup>88</sup> Nothing in this title shall be interpreted as lessening in any degree the control of the Commission over all matters connected with the radio equipment and its operation on shipboard and its decision and determination in regard to the radio requirements, installations, or exemptions from prescribed radio requirements shall be final, subject only to review in accordance with law.

#### FORFEITURES

SEC. 364.<sup>88</sup> The following forfeitures shall apply to this part, in addition to the penalties and forfeitures provided by title V of this Act:

(a) Any ship that leaves or attempts to leave any harbor or port of the United States in violation of the provisions of this part, or the rules and regulations of the Commission made in pursuance thereof, or any ship of the United States that is navigated outside of any harbor or port in violation of any of the provisions of this part, or the rules and regulations of the Commission made in pursuance thereof, shall forfeit to the United States the sum of \$500, recoverable by way of suit or libel. Each such departure or attempted departure, and in the case of a ship of the United States each day during which such navigation occurs shall constitute a separate offense.

(b) Every willful failure on the part of the master of a ship of the United States to enforce or to comply with the provisions of this Act or the rules and regulations of the Commission as to equipment, operators, watches, or radio service shall cause him to forfeit to the United States the sum of \$100.

#### PART III <sup>89</sup>—RADIO INSTALLATIONS ON VESSELS CARRYING PASSENGERS FOR HIRE

SEC. 381. Except as provided in section 382, it shall be unlawful for any vessel of the United States, transporting more than six passengers for hire, to be navigated in the open sea or any tidewater

<sup>88</sup> See note 69.

<sup>89</sup> This part (secs. 381-386) was added, effective March 1, 1957, by Public No. 935, 84th Congress, 2d Sess., approved Aug. 6, 1956, 70 Stat. 1047-1049.

within the jurisdiction of the United States adjacent or contiguous to the open sea, unless such vessel is equipped with an efficient radio-telephone installation in operating condition.

SEC. 382. The provisions of this part shall not apply to—

(1) vessels which are equipped with a radio installation in accordance with the provisions of part II of title III of this Act, or in accordance with the radio requirements of the Safety Convention; and

(2) vessels of the United States belonging to and operated by the Government, except a vessel of the United States Maritime Administration, the Inland and Coastwise Waterways Service, or the Panama Canal Company,<sup>90</sup> and

(3) vessels navigating on the Great Lakes.

SEC. 383. The Commission shall exempt from the provisions of this part any vessel, or class of vessels, in the case of which the route or conditions of the voyage, or other conditions or circumstances, are such as to render a radio installation unreasonable, unnecessary, or ineffective, for the purposes of this Act.

SEC. 384. The Commission shall have authority with respect to any vessel subject to this part—

(1) to specify operating and technical conditions and characteristics including frequencies, emissions, power, communication capability and range, of installations required by reason of this part;

(2) to approve the details as to the location and manner of installation of the equipment required by this part or of equipment necessitated by reason of the purposes and requirements of this part;

(3) to approve installations, apparatus and spare parts necessary to comply with the purposes and requirements of this part;

(4) to prescribe such additional equipment as may be determined to be necessary to supplement that specified herein for the proper functioning of the radio installation installed in accordance with this part or for the proper conduct of radio communication in time of emergency or distress.

SEC. 385. The Commission shall make such inspections as may be necessary to insure compliance with the requirements of this part.

SEC. 386. The following forfeitures shall apply to this part in addition to penalties and forfeitures provided by title V of this Act:

(a) Any vessel of the United States that is navigated in violation of the provisions of this part or of the rules and regulations of the Commission made in pursuance thereof shall forfeit to the United States the sum of \$500 recoverable by way of suit or libel. Each day during which such navigation occurs shall constitute a separate offense.

(b) Every willful failure on the part of the master of a vessel of the United States to enforce or to comply with the provisions of this part or the rules and regulations of the Commission made in pursuance thereof shall cause him to forfeit to the United States the sum of \$100.

<sup>90</sup> See note 77.

## TITLE IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS

### JURISDICTION TO ENFORCE ACT AND ORDERS OF COMMISSION

SEC. 401. (a) The district courts of the United States shall have jurisdiction, upon application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this Act by any person, to issue a writ or writs of mandamus commanding such person to comply with the provisions of this Act.

(b) If any person fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Commission or any party injured thereby, or the United States, by its Attorney General, may apply to the appropriate district court of the United States for the enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person or the officers, agents, or representatives of such person, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

(c) Upon the request of the Commission it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecutions shall be paid out of the appropriations for the expenses of the courts of the United States.

(d) The provisions of the Expediting Act, approved February 11, 1903, as amended, and of section 238(1) of the Judicial Code, as amended, shall be held to apply to any suit in equity arising under Title II of this Act, wherein the United States is complainant.

### PROCEEDINGS TO ENJOIN, SET ASIDE, ANNUL, OR SUSPEND ORDERS OF THE COMMISSION

SEC. 402. (a) Any proceeding to enjoin, set aside, annul, or suspend any order of the Commission under this Act (except those appealable under subsection (b) of this section) shall be brought as provided by and in the manner prescribed in Public Law 901, Eighty-first Congress, approved December 29, 1950.

(b) Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit or station license, whose application is denied by the Commission.

(2) By any applicant for the renewal or modification of any such instrument of authorization whose application is denied by the Commission.

(3) By any party to an application for authority to transfer, assign, or dispose of any such instrument of authorization, or any rights thereunder, whose application is denied by the Commission.

(4) By any applicant for the permit required by section 325 of this Act whose application has been denied by the Commission, or by any permittee under said section whose permit has been revoked by the Commission.

(5) By the holder of any construction permit or station license which has been modified or revoked by the Commission.

(6) By any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in paragraphs (1), (2), (3), and (4) hereof.

(7) By any person upon whom an order to cease and desist has been served under section 312 of this Act.

(8) By any radio operator whose license has been suspended by the Commission.

(c) Such appeal shall be taken by filing a notice of appeal with the court within thirty days from the date upon which public notice is given of the decision or order complained of. Such notice of appeal shall contain a concise statement of the nature of the proceedings as to which the appeal is taken; a concise statement of the reasons on which the applicant intends to rely, separately stated and numbered; and proof of service of a true copy of said notice and statement upon the Commission. Upon filing of such notice, the court shall have jurisdiction of the proceedings and of the questions determined therein and shall have power, by order, directed to the Commission or any other party to the appeal, to grant such temporary relief as it may deem just and proper. Orders granting temporary relief may be either affirmative or negative in their scope and application so as to permit either the maintenance of the status quo in the matter in which the appeal is taken or the restoration of a position or status terminated or adversely affected by the order appealed from and shall, unless otherwise ordered by the court, be effective pending hearing and determination of said appeal and compliance by the Commission with the final judgment of the court rendered in said appeal.

(d) Upon the filing of any such notice of appeal the Commission shall, not later than five days after the date of service upon it, notify each person shown by the records of the Commission to be interested in said appeal of the filing and pendency of the same and shall thereafter permit any such person to inspect and make copies of said notice and statement of reasons therefor at the office of the Commission in the city of Washington. Within thirty days after the filing of an appeal, the Commission shall file with the court the record upon which the order complained of was entered, as provided in Section 2112 of Title 28, United States Code.<sup>91</sup>

<sup>91</sup> Section 402(d) was amended to read as above by Public No. 791, 85th Cong., 2d Sess., approved August 28, 1958, 72 Stat. 945. The section formerly read as follows:

(d) Upon the filing of any such notice of appeal the Commission shall, not later than five days after the date of service upon it, notify each person shown by the records of the Commission to be interested in said appeal of the filing and pendency of the same and shall thereafter permit any such person to inspect and make copies of said notice and statement of reasons therefor at the office of the Commission in the City of Washington. Within thirty days after the filing of an appeal, the Commission shall file with the court a copy of the order complained of, a full statement in writing of the facts and grounds relied upon by it in support of the order involved upon said appeal, and the originals or certified copies of all papers and evidence presented to and considered by it in entering

(e) Within thirty days after the filing of any such appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interest would be adversely affected by a reversal or modification of the order of the Commission complained of shall be considered an interested party.

(f) The record and briefs upon which any such appeal shall be heard and determined by the court shall contain such information and material, and shall be prepared within such time and in such manner as the court may by rule prescribe.

(g) At the earliest convenient time the court shall hear and determine the appeal upon the record before it in the manner prescribed by section 10(e) of the Administrative Procedure Act.

(h) In the event that the court shall render a decision and enter an order reversing the order of the Commission, it shall remand the case to the Commission to carry out the judgment of the court and it shall be the duty of the Commission, in the absence of the proceedings to review such judgment, to forthwith give effect thereto, and unless otherwise ordered by the court, to do so upon the basis of the proceedings already had and the record upon which said appeal was heard and determined.

(i) The court may, in its discretion, enter judgment for costs in favor of or against an appellant, or other interested parties intervening in said appeal, but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof.

(j) The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 1254 of title 28 of the United States Code, by the appellant, by the Commission, or by any interested party intervening in the appeal, or by certification by the court pursuant to the provisions of that section.<sup>62</sup>

<sup>62</sup> Before it was amended by the Communications Act Amendments, 1952, the original section 402 read as follows:

**PROCEEDINGS TO ENFORCE OR SET ASIDE THE COMMISSION'S ORDERS—  
APPEAL IN CERTAIN CASES**

**Sec. 402.** (a) The provisions of Title 28 of the United States Code, relating to the enforcing or setting aside of the orders of the Interstate Commerce Commission, are made applicable to suits to enforce, enjoin, set aside, annul, or suspend any order of the Commission under this chapter (except any order of the Commission granting or refusing an application for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, or suspending a radio operator's license), and such suits are authorized to be brought as provided in such Title 28.

(b) An appeal may be taken, in the manner hereinafter provided, from decision of the Commission to the Court of Appeals of the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

(2) By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

(3) By any radio operator whose license has been suspended by the Commission.

(c) Such appeal shall be taken by filing with said court within twenty days after the decision complained of is effective, notice in writing of said appeal and a statement of the reasons therefor, together with proof of service of a true copy of said notice and statement upon the Commission. Unless a later date is specified by the Commission as part of its decision, the decision complained of shall be considered to be effective as of the date on which public announcement of the decision is made at the office of the Commission in the city of Washington, D.C.

## INQUIRY BY COMMISSION ON ITS OWN MOTION

SEC. 403. The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. The Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had, excepting orders for the payment of money.

## REPORTS OF INVESTIGATIONS

SEC. 404. Whenever an investigation shall be made by the Commission it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirements in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

## REHEARINGS BEFORE COMMISSION

SEC. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, 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. Petitions for rehearing must be filed within thirty

*any event not later than five days from the date of such service upon it, mail or otherwise deliver a copy of said notice of appeal to each person shown by the records of the Commission to be interested in such appeal and to have a right to intervene therein under the provisions of this section, and shall at all times thereafter permit any such person to inspect and make copies of the appellant's statement of reasons for said appeal at the office of the Commission in the city of Washington. Within thirty days after the filing of said appeal the Commission shall file with the court the originals or certified copies of all papers and evidence presented to it upon the application or order involved, and also a like copy of its decision thereon, and shall within thirty days thereafter file a full statement in writing of the facts and grounds for its decision as found and given by it, and a list of all interested persons to whom it has mailed or otherwise delivered a copy of said notice of appeal.*

*(d) Within thirty days after the filing of said appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interests would be adversely affected by a reversal or modification of the decision of the Commission complained of shall be considered an interested party.*

*(e) At the earliest convenient time the court shall hear and determine the appeal upon the record before it, and shall have power, upon such record, to enter a judgment affirming or reversing the decision of the Commission, and in event the court shall render a decision and enter an order reversing the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court: Provided, however, That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 240 of the Judicial Code, as amended, by appellant, by the Commission, or by any interested party intervening in the appeal.*

*(f) The court may, in its discretion, enter judgment for costs in favor of or against an appellant, and/or other interested parties intervening in said appeal, but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof.*

days from the date upon which public notice is given of any decision, order, or requirement complained of. No such application shall excuse any person from complying with or obeying any decision, order, or requirement 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, except where the party seeking such review (1) was not a party to the proceedings resulting in such decision, order, or requirement, or (2) relies on questions of fact or law upon which the Commission has been afforded no opportunity to pass. The Commission shall enter an order, with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate: *Provided*, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission shall take such action within ninety days of the filing of such petition. 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 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), 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 made 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.<sup>93</sup>

<sup>93</sup> Section 405 was amended to read as above by Public Law 86-752, approved September 13, 1960, 74 Stat. 889. It formerly read as follows:

#### REHEARINGS BEFORE COMMISSION

*Sec. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, 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. Petitions for rehearing must be filed within thirty days from the date upon which public notice is given of any decision, order, or requirement complained of. No such application shall excuse any person from complying with or obeying any decision, order, or requirement 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, except where the party seeking such review (1) was not a party to the proceedings resulting in such decision, order, or requirement, or (2) relies on questions of fact or law upon which the Commission has been afforded no opportunity to pass. 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 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), 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 made 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.*

The Communications Act Amendments of 1960 provided that this amendment shall only apply to petitions for rehearing filed on or after September 13, 1960.

Before it was amended by the Communications Act Amendments, 1952, the original Section 405 read as follows:

#### REHEARING BEFORE COMMISSION

*Sec. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear: Pro-*



## MANDAMUS TO COMPEL FURNISHING OF FACILITIES

SEC. 406. The district courts of the United States shall have jurisdiction upon the relation of any person alleging any violation, by a carrier subject to this Act, of any of the provisions of this Act which prevent the relator from receiving service in interstate or foreign communication by wire or radio, or in interstate or foreign transmission of energy by radio, from said carrier at the same charges, or upon terms or conditions as favorable as those given by said carrier for like communication or transmission under similar conditions to any other person, to issue a writ or writs of mandamus against said carrier commanding such carrier to furnish facilities for such communication or transmission to the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper pending the determination of the question of fact: *Provided further*, That the remedy hereby given by writ of mandamus shall be cumulative and shall not be held to exclude or interfere with other remedies provided by this Act.

## PETITION FOR ENFORCEMENT OF ORDER FOR PAYMENT OF MONEY

SEC. 407. If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the line of the carrier runs, or in any State court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suits the findings and order of the Commission shall be prima facie evidence of the facts therein stated, except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the cost of the suit.

*vided, however, That in the case of a decision, order, or requirement made under title III, the time within which application for rehearing may be made shall be limited to twenty days after the effective date thereof, and such application may be made by any party or any person aggrieved or whose interests are adversely affected thereby. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted, the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination, shall be subject to the same provisions as an original order.*

## ORDERS NOT FOR PAYMENT OF MONEY—WHEN EFFECTIVE

SEC. 408. Except as otherwise provided in this Act, all orders of the Commission, other than orders for the payment of money, shall take effect within such reasonable time, not less than thirty days after service of the order, and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

## 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.

(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.

(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) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, 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 Coun-

sel, the Office of the Chief Engineer, or the Office of the Chief Accountant 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, unless upon notice and opportunity for all parties to participate.

(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 are in conflict with provisions of the Administrative Procedure Act, such provisions of this section shall be held to supersede and modify the provisions of the Act.<sup>24</sup>

(e) For the purposes of this Act the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, schedules of charges, contracts, agreements, and documents relating to any matter under investigation. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(f) Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

(g) Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier or licensee or other person, issue an order requiring such common carrier, licensee, or other person to appear before the Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(h) The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any United States commissioner, or any clerk of a district

<sup>24</sup> The Communications Act Amendments, 1952, substituted subsections (a), (b), (c), and (d) to read as above, for subsection (a). This subsection formerly read as follows:  
Sec. 409. (a) Any member or examiner of the Commission, or the director of any division, when duly designated by the Commission for such purpose, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Commission; except that in the administration of title III an examiner may not be authorized to exercise such powers with respect to a matter involving (1) a change of policy by the Commission, (2) the revocation of a station license, (3) new devices or developments in radio, or (4) a new kind of use of frequencies. In all cases heard by an examiner the Commission shall hear oral arguments on request of either party.

court, or any chancellor, justice, or judge of a supreme or superior court, mayor, or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided.

(i) Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(j) If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

(k) Witnesses whose depositions are taken as authorized in this Act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(l) No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, and documents before the Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(m) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, schedules of charges, contracts, agreements, and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission, shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$100 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

## USE OF JOINT BOARDS—COOPERATION WITH STATE COMMISSIONS

SEC. 410. (a) Except as provided in section 409, the Commission may refer any matter arising in the administration of this Act to a joint board to be composed of a member, or of an equal number of members, as determined by the Commission, from each of the States in which the wire or radio communication affected by or involved in the proceeding takes place or is proposed. For purposes of acting upon such matter any such board shall have all the jurisdiction and powers conferred by law upon an examiner provided for in section 11 of the Administrative Procedure Act, designated by the Commission, and shall be subject to the same duties and obligations.<sup>95</sup> The action of a joint board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The joint board member or members for each State shall be nominated by the State commission of the State or by the Governor if there is no State commission, and appointed by the Federal Communications Commission. The Commission shall have discretion to reject any nominee. Joint board members shall receive such allowances for expenses as the Commission shall provide.

(b) The Commission may confer with any State commission having regulatory jurisdiction with respect to carriers, regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized under such rules and regulations as it shall prescribe to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this Act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

## JOINDER OF PARTIES

SEC. 411. (a) In any proceeding for the enforcement of the provisions of this Act, whether such proceeding be instituted before the Commission or be begun originally in any district court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

(b) In any suit for the enforcement of an order for the payment of money all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages

<sup>95</sup> This subsection, as amended by the Communications Act Amendments, 1952 (which substituted for the first sentence of the original subsection two new sentences) was further amended by Public No. 914, 84th Cong., 2d sess., approved Aug. 2, 1956, 70 Stat. 931 by adding before the words "the Commission" in the second sentence of this subsection the words "an examiner provided for in section 11 of the Administrative Procedure Act, designated by".

may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit, the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

#### DOCUMENTS FILED TO BE PUBLIC RECORDS—USE IN PROCEEDINGS

SEC. 412. The copies of schedules of charges, classifications, and of all contracts, agreements, and arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers and other persons made to the Commission as required under the provisions of this Act shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the Secretary, under the Commission's seal, shall be received in evidence with like effect as the originals: *Provided*, That the Commission may, if the public interest will be served thereby, keep confidential any contract, agreement, or arrangement relating to foreign wire or radio communication when the publication of such contract, agreement, or arrangement would place American communication companies at a disadvantage in meeting the competition of foreign communication companies.

#### DESIGNATION OF AGENT FOR SERVICE

SEC. 413. It shall be the duty of every carrier subject to this Act, within sixty days after the taking effect of this Act, to designate in writing an agent in the District of Columbia, upon whom service of all notices and process and all orders, decisions, and requirements of the Commission may be made for and on behalf of said carrier in any proceeding or suit pending before the Commission, and to file such designation in the office of the secretary of the Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and process and orders, decisions, and requirements of the Commission may be made upon such carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the District of Columbia, with like effect as if made personally upon such carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the office of the secretary of the Commission.

## REMEDIES IN THIS ACT NOT EXCLUSIVE

SEC. 414. Nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies.

## LIMITATIONS AS TO ACTIONS

SEC. 415. (a) All actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun, within one year from the time the cause of action accrues, and not after.

(b) All complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within one year from the time the cause of action accrues, and not after, subject to subsection (d) of this section.

(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers within one year from the time the cause of action accrues, and not after, subject to subsection (d) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the one-year period of limitation said period shall be extended to include one year from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(d) If on or before expiration of the period of limitation in subsection (b) or (c) a carrier begins action under subsection (a) for recovery of lawful charges in respect of the same service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(e) The cause of action in respect of the transmission of a message shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(f) A petition of the enforcement of an order of the Commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

(g) The term "overcharges" as used in this section shall be deemed to mean charges for services in excess of those applicable thereto under the schedules of charges lawfully on file with the Commission.

## PROVISIONS RELATING TO ORDERS

SEC. 416. (a) Every order of the Commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law.

(b) Except as otherwise provided in this Act, the Commission is hereby authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

(c) It shall be the duty of every person, its agents and employees, and any receiver or trustee thereof, to observe and comply with such orders so long as the same shall remain in effect.

## TITLE V—PENAL PROVISIONS <sup>96</sup>—FORFEITURES

### GENERAL PENALTY

SEC. 501. Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this Act prohibited or declared to be unlawful, or who willfully or knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished for such offense, for which no penalty (other than a forfeiture) is provided in this Act, by a fine of not more than \$10,000 or by imprisonment for a term not exceeding one year, or both; except that any person, having been once convicted of an offense punishable under this section, who is subsequently convicted of violating any provision of this Act punishable under this section, shall be punished by a fine of not more than \$10,000 or by imprisonment for a term not exceeding two years, or both.<sup>97</sup>

SEC. 502. Any person who willfully and knowingly violates any rule, regulation, restriction, or condition made or imposed by the Commission under authority of this Act, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is or may hereafter become a party, shall, in addition to any other penalties provided by law, be punished, upon conviction thereof, by a fine of not more than \$500 for each and every day during which such offense occurs.

SEC. 503. (a) Any person who shall deliver messages for interstate or foreign transmission to any carrier, or for whom, as sender or receiver, any such carrier shall transmit any interstate or foreign wire or radio communication, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transmission of such messages as fixed by the schedules of charges provided for in this Act, shall in addition to any other penalty provided by this Act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and

<sup>96</sup> The Communications Act amendments, 1952, amended title 18, United States Code "Crimes and Criminal Procedure" by adding the following new section.

§ 1543. *Fraud by wire, radio, or television.*

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of interstate wire, radio, or television communication, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

<sup>97</sup> Sec. 501 was amended to read as above by Public No. 314, 83d Cong., 2d Sess., approved March 23, 1954 (68 Stat. 30). The last phrase of section 501 formerly read, as follows:

\* \* \* shall, upon conviction thereof, be punished for such offense \* \* \* by a fine of not more than \$10,000 or by imprisonment for a term of not more than two years, or both.



in the trial of said action all such rebates or other considerations so received or accepted, for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

(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.<sup>98</sup>

<sup>98</sup> Section 503 was amended to read as above by Public Law 86-752, approved September 13, 1980, 74 Stat. 889. It formerly read as follows:

#### FORFEITURE IN CASES OF REBATES AND OFFSETS

*Sec. 503. Any person who shall deliver messages for interstate or foreign transmission to any carrier, or for whom as sender or receiver, and such carrier shall transmit any interstate or foreign wire or radio communication, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transmission of such messages as fixed by the schedules of charges provided for in this Act, shall in addition to any other penalty provided by this Act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.*

## 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. 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 costs and expenses of such prosecutions shall be paid from the appropriation for the expenses of the courts of the United States.

(b) The forfeitures imposed by parts II and III of title III and 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.<sup>98</sup>

<sup>98</sup> Section 504 was amended to read as above by Public Law 86-752, approved September 13, 1960, 74 Stat. 889. It formerly read as follows:

## PROVISIONS RELATING TO FORFEITURES

Sec. 504. (a) The forfeiture 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 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. 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 costs and expenses of such prosecutions shall be paid from the appropriation for the expenses of the courts of the United States.

(b) The forfeitures imposed by title III, part II 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.

Before it as amended by Public No. 97, 75th Cong., approved May 20, 1937, 505 Stat. 197, the original section 504 read as follows:

Sec. 504. 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 forfeiture 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

## VENUE OF OFFENSES

SEC. 505. The trial of any offense under this Act shall be in the district in which it is committed; or if the offense is committed upon the high seas, or out of the jurisdiction of any particular State or district, the trial shall be in the district where the offender may be found or into which he shall be first brought. Whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

## COERCIVE PRACTICES AFFECTING BROADCASTING

SEC. 506. (a) It shall be unlawful, by the use or express or implied threat of the use of force, violence, intimidation, or duress, or by the use or express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel, or constrain a licensee—

(1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services; or

(2) to pay or give or agree to pay or give any money or other thing of value in lieu of giving, or on account of failure to give, employment to any person or persons, in connection with the conduct of the broadcasting business of such licensee, in excess of the number of employees needed by such licensee to perform actual services; or

(3) to pay or agree to pay more than once for services performed in connection with the conduct of the broadcasting business of such licensee; or

(4) to pay or give or agree to pay or give any money or other thing of value for services, in connection with the conduct of the broadcasting business of such licensee, which are not to be performed; or

(5) to refrain, or agree to refrain, from broadcasting or from permitting the broadcasting of a noncommercial educational or cultural program in connection with which the participants receive no money or other thing of value for their services, other than their actual expenses, and such licensee neither pays nor gives any money or other thing of value for the privilege of broadcasting such program nor receives any money or other thing of value on account of the broadcasting of such program; or

(6) to refrain, or agree to refrain, from broadcasting or permitting the broadcasting of any radio communication originating outside the United States.

(b) It shall be unlawful, by the use or express or implied threat of the use of force, violence, intimidation or duress, or by the use

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*United States, to prosecute for the recovery of forfeitures under this Act. The costs and expenses of such prosecutions shall be paid from the appropriation for the expenses of the courts of the United States.*

It was further amended by Section 2 of Public No. 985, 84th Cong., 2d Sess., approved Aug. 6, 1956; 70 Stat. 1048 so as to be made applicable to the forfeitures provided for in connection with the addition of part III (Secs. 381-386) of title III, which were added by Public No. 985. Section 2 of Public No. 985 deleted the prior references to "part II of title III and section 507", and inserted in lieu thereof "parts II and III of title III and section 507".

or express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel or constrain a licensee or any other person—

(1) to pay or agree to pay any exaction for the privilege of, or on account of, producing, preparing, manufacturing, selling, buying, renting, operating, using, or maintaining recordings, transcriptions, or mechanical, chemical, or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in broadcasting or in the production, preparation, performance, or presentation of a program or programs for broadcasting; or

(2) to accede to or impose any restriction upon such production, preparation, manufacture, sale, purchase, rental, operation, use, or maintenance, if such restriction is for the purpose of preventing or limiting the use of such articles, equipment, machines, or materials in broadcasting or in the production, preparation, performance, or presentation of a program or programs for broadcasting; or

(3) to pay or agree to pay any exaction on account of the broadcasting, by means of recordings or transcriptions, of a program previously broadcast, payment having been made, or agreed to be made, for the services actually rendered in the performance of such program.

(c) The provisions of subsection (a) or (b) of this section shall not be held to make unlawful the enforcement or attempted enforcement, by means lawfully employed, of any contract right heretofore or hereafter existing or of any legal obligation heretofore or hereafter incurred or assumed.

(d) Whoever willfully violates any provision of subsection (a) or (b) of this section shall, upon conviction thereof, be punished by imprisonment for not more than one year or by a fine of not more than \$1,000, or both.

(e) As used in this section the term "licensee" includes the owner or owners, and the person or persons having control or management, of the radio station in respect of which a station license was granted.<sup>100</sup>

#### VIOLATION OF GREAT LAKES AGREEMENT

SEC. 507.<sup>101</sup> (a) Any vessel of the United States that is navigated in violation of the provisions of the Great Lakes Agreement or the rules and regulations of the Commission made in pursuance thereof and any vessel of a foreign country that is so navigated on waters under the jurisdiction of the United States shall forfeit to the United States the sum of \$500 recoverable by way of suit or libel. Each day during which such navigation occurs shall constitute a separate offense.

(b) Every willful failure on the part of the master of a vessel of the United States to enforce or to comply with the provisions of the Great Lakes Agreement or the rules and regulations of the Commission made in pursuance thereof shall cause him to forfeit to the United States the sum of \$100.

<sup>100</sup> This section was added by Public No. 344, 78th Cong., 2d Sess., approved April 16, 1948, 60 Stat. 89.

<sup>101</sup> Section 507 was added by Public Law 590, 83d Cong., 2d Sess., approved August 13, 1954, effective November 13, 1954, 68 Stat. 729.

## 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.<sup>102</sup>

## 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

<sup>102</sup> This section was added by Public Law 86-752, approved September 13, 1960, 74 Stat. 889.

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.<sup>103</sup>

<sup>103</sup> This section was added by Public Law 86-752, approved September 13, 1960, 74 Stat. 889.

## TITLE VI—MISCELLANEOUS PROVISIONS

### TRANSFER TO COMMISSION OF DUTIES, POWERS, AND FUNCTIONS UNDER EXISTING LAW

SEC. 601. (a) All duties, powers, and functions of the Interstate Commerce Commission under the Act of August 7, 1888 (25 Stat. 382), relating to operation of telegraph lines by railroad and telegraph companies granted Government aid in the construction of their lines, are hereby imposed upon and vested in the Commission: *Provided*, That such transfer of duties, powers, and functions shall not be construed to affect the duties, powers, functions, or jurisdiction of the Interstate Commerce Commission under, or to interfere with or prevent the enforcement of, the Interstate Commerce Act and all Acts amendatory thereof or supplemental thereto.

(b) All duties, powers, and functions of the Postmaster General with respect to telegraph companies and telegraph lines under any existing provision of law are hereby imposed upon and vested in the Commission.

### REPEALS AND AMENDMENTS

SEC. 602. (a) The Radio Act of 1927, as amended, is hereby repealed.

(b) The provisions of the Interstate Commerce Act, as amended, insofar as they relate to communication by wire or wireless, or to telegraph, telephone, or cable companies operating by wire or wireless, except the last proviso of section 1(5) and the provisions of section 1(7), are hereby repealed.

(c) The last sentence of section 2 of the Act entitled "An Act relating to the landing and operation of submarine cables in the United States," approved May 27, 1921, is amended to read as follows: "Nothing herein contained shall be construed to limit the power and jurisdiction of the Federal Communications Commission with respect to the transmission of messages."

(d) The first paragraph of section 11 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, is amended to read as follows:

"SEC. 11. That authority to enforce compliance with sections 2, 3, 7, and 8 of this Act by the persons respectively subject thereto is hereby vested: In the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Federal Reserve Board where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:"

(e)<sup>104</sup> The Act entitled "An Act to require apparatus and operators for radio communication on certain ocean steamers", approved June 24, 1910, as amended, is hereby repealed.

#### TRANSFER OF EMPLOYEES, RECORDS, PROPERTY, AND APPROPRIATIONS

SEC. 603. (a) All officers and employees of the Federal Radio Commission (except the members thereof, whose officers are hereby abolished) whose services in the judgment of the Commission are necessary to the efficient operation of the Commission are hereby transferred to the Commission, without change in classification or compensation; except that the Commission may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

(b) There are hereby transferred to the jurisdiction and control of the Commission (1) all records and property (including office furniture and equipment, and including monitoring radio stations) under the jurisdiction of the Federal Radio Commission, and (2) all records under the jurisdiction of the Interstate Commerce Commission and of the Postmaster General relating to the duties, powers, and functions imposed upon and vested in the Commission by this Act.

(c) All appropriations and unexpended balances of appropriations available for expenditure by the Federal Radio Commission shall be available for expenditure by the Commission for any and all objects of expenditure authorized by this Act in the discretion of the Commission, without regard to the requirement of apportionment under the Antideficiency Act of February 27, 1906.

#### EFFECT OF TRANSFERS, REPEALS, AND AMENDMENTS

SEC. 604. (a) All orders, determinations, rules, regulations, permits, contracts, licenses, and privileges which have been issued, made, or granted by the Interstate Commerce Commission, the Federal Radio Commission, or the Postmaster General, under any provision of law repealed or amended by this Act or in the exercise of duties, powers, or functions transferred to the Commission by this Act, and which are in effect at the time this section takes effect, shall continue in effect until modified, terminated, superseded, or repealed by the Commission or by operation of law.

(b) Any proceeding, hearing, or investigation commenced or pending before the Federal Radio Commission, the Interstate Commerce Commission, or the Postmaster General, at the time of the organization of the Commission, shall be continued by the Commission in the same manner as though originally commenced before the Commission, if such proceeding, hearing, or investigation (1) involves the administration of duties, powers, and functions transferred to the Commission

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<sup>104</sup> This subsection was amended to read as above by Public Law 590, 83d Cong., 2d Sess., approved August 13, 1954, effective November 13, 1954. Subsection (e) formerly read, as follows:

(e) Such part or parts of the Act entitled "An Act to require apparatus and operators for radio communication on certain ocean steamers", approved June 24, 1910, as amended, as relate to the ocean and to steamers navigating thereon, are hereby repealed. In all other respects said Act shall continue in full force and effect. The Commission is requested and directed to make a special study of the radio requirements necessary or desirable for safety purposes for ships navigating the Great Lakes and the inland waters of the United States, and to report its recommendations, and the reasons therefor, to the Congress as soon as practicable but not later than January 1, 1941.



by this Act, or (2) involves the exercise of jurisdiction similar to that granted to the Commission under the provisions of this Act.

(c) All records transferred to the Commission under this Act shall be available for use by the Commission to the same extent as if such records were originally records of the Commission. All final valuations and determinations of depreciation charges by the Interstate Commerce Commission with respect to common carriers engaged in radio or wire communication, and all orders of the Interstate Commerce Commission with respect to such valuations and determinations, shall have the same force and effect as though made by the Commission under this Act.

(d) The provisions of this Act shall not affect suits commenced prior to the date of the organization of the Commission; and all such suits shall be continued, proceedings therein had, appeals therein taken and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed. No suit, action, or other proceeding lawfully commenced by or against any agency or officer of the United States, in relation to the discharge of official duties, shall abate by reason of any transfer of authority, power, and duties from such agency or officer to the Commission under the provisions of this Act, but the court, upon motion or supplemental petition filed at any time within twelve months after such transfer, showing the necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the Commission.

#### UNAUTHORIZED PUBLICATION OF COMMUNICATIONS

SEC. 605. No person receiving or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent, or attorney, or to a person employed or authorized to forward such communication to its destination, or to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, or to the master of a ship under whom he is serving, or in response to a subpoena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto: *Provided*, That this

section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication broadcast, or transmitted by amateurs or others for the use of the general public, or relating to ships in distress.

#### WAR EMERGENCY—POWERS OF PRESIDENT

SEC. 606.<sup>105</sup> (a) During the continuance of a war in which the United States is engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such communications as in his judgment may be essential to the national defense and security shall have preference or priority with any carrier subject to this Act. He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them and for any such purpose he is hereby authorized to issue orders directly, or through such person or persons as he designates for the purpose, or through the Commission. Any carrier complying with any such order or direction for preference or priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction.

(b) It shall be unlawful for any person during any war in which the United States is engaged to knowingly or willfully, by physical force or intimidation by threats of physical force, obstruct or retard or aid in obstructing or retarding interstate or foreign communication by radio or wire. The President is hereby authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of communication: *Provided*, That nothing in this section shall be construed to repeal, modify, or affect either section 6 or section 20 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

(c) Upon proclamation by the President that there exists war or a threat of war, or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President, if he deems it necessary in the interest of national security, or defense, may suspend or amend, for such time as he may see fit, the rules and regulations applicable to any or all stations or devices

<sup>105</sup> Joint resolution effective July 25, 1947, Public, No. 239, 80th Congress, 1st Session, Sec. 3, 61 Stat. 449 provided that in the interpretation of this Section "the date when this joint resolution becomes effective shall be deemed to be the date of the termination of any state of war heretofore declared by the Congress and of the national emergencies proclaimed by the President on September 8, 1939, and on May 27, 1941."

EXECUTIVE ORDER NO. 9831

Feb. 24, 1947, 12 F.R. 1363

#### BOARD OF WAR COMMUNICATIONS ABOLISHED

By virtue of the authority vested in me by the Constitution and statutes, including the Communications Act of 1934 (48 Stat. 1104, as amended; 47 U.S.C. 606) and as President of the United States, and in the interest of the internal management of the Government, it is hereby ordered as follows:

1. The Board of War Communications, established as the Defense Communications Board by the Executive Order No. 8546 of September 24, 1940, is abolished, and all property and records thereof are transferred to the Federal Communications Commission.

2. Executive Orders Nos. 8546 of September 24, 1940, 8960 of December 6, 1941, 8964 of December 10, 1941, 9089 of March 8, 1942, and 9183 of June 15, 1942, are revoked.

capable of emitting electromagnetic radiations within the jurisdiction of the United States as prescribed by the Commission, and may cause the closing of any station for radio communication, or any device capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles, which is suitable for use as a navigational aid beyond five miles, and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such station or device and/or its apparatus and equipment, by any department of the Government under such regulations as he may prescribe upon just compensation to the owners. The authority granted to the President, under this subsection, to cause the closing of any station or device and the removal therefrom of its apparatus and equipment, or to authorize the use or control of any station or device and/or its apparatus and equipment, may be exercised in the Canal Zone.<sup>106</sup>

(d) Upon proclamation by the President that there exists a state or threat of war involving the United States, the President, if he deems it necessary in the interest of the national security and defense, may, during a period ending not later than six months after the termination of such state or threat of war and not later than such earlier date as the Congress by concurrent resolution may designate, (1) suspend or amend the rules and regulations applicable to any or all facilities or stations for wire communication within the jurisdiction of the United States as prescribed by the Commission, (2) cause the closing of any facility or station for wire communication and the removal therefrom of its apparatus and equipment, or (3) authorize the use or control of any such facility or station and its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.<sup>107</sup>

(e) The President shall ascertain the just compensation for such use or control and certify the amount ascertained to Congress for appropriation and payment to the person entitled thereto. If the amount so certified is unsatisfactory to the person entitled thereto, such person shall be paid only 75 per centum of the amount and shall be entitled to sue the United States to recover such further sum as added to such payment of 75 per centum will make such amount as will be just compensation for the use and control. Such suit shall be brought in the manner provided by paragraph 20 of section 24, or by section 145, of the Judicial Code, as amended.

(f) Nothing in subsection (c) or (d) shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in rela-

<sup>106</sup> Subsection (c) amended to read as above by Public Law 200, 82d Congress, approved October 24, 1951 (85 Stat. 4087). Section 606(c) formerly read as follows:

"(c) Upon proclamation by the President that there exists war or a threat of war or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President may suspend or amend, for such time as he may see fit, the rules and regulations applicable to any or all stations within the jurisdiction of the United States as prescribed by the Commission, and may cause the closing of any station for radio communication and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such station and/or its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners."

By Executive Order No. 10312, issued December 10, 1951 (16 Fed. Reg. 12452), the President delegated to the Federal Communications Commission, subject to certain specific limitations, the authority vested in him by Section 606(c) with respect to radio stations, except those owned and operated by any department or agency of the United States Government. With respect to the latter stations, the authority vested in the President by Section 606(c) is delegated, subject to certain specific limitations, to the head of each department or agency the stations of which are involved.

<sup>107</sup> Paragraph (d) added by Public No. 413, 77th Congress, approved January 26, 1942; 56 Stat. 18, former paragraph (d) then became present paragraph (e).

tion to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by any communication system or systems.<sup>108</sup>

(g) Nothing in subsection (c) or (d) shall be construed to authorize the President to make any amendment to the rules and regulations of the Commission which the Commission would not be authorized by law to make; and nothing in subsection (d) shall be construed to authorize the President to take any action the force and effect of which shall continue beyond the date after which taking of such action would not have been authorized.

(h) Any person who willfully does or causes or suffers to be done any act prohibited pursuant to the exercise of the President's authority under this section, or who willfully fails to do any act which he is required to do pursuant to the exercise of the President's authority under this section, or who willfully causes or suffers such failure, shall, upon conviction thereof, be punished for such offense by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both, and, if a firm, partnership, association, or corporation, by fine of not more than \$5,000, except that any person who commits such an offense with intent to injure the United States, or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than 20 years, or both.<sup>109</sup>

#### EFFECTIVE DATE OF ACT

SEC. 607. This Act shall take effect upon the organization of the Commission, except that this section and sections 1 and 4 shall take effect July 1, 1934. The Commission shall be deemed to be organized upon such date as four members of the Commission have taken office.<sup>110</sup>

#### SEPARABILITY CLAUSE

SEC. 608. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

#### SHORT TITLE

SEC. 609. This Act may be cited as the "Communications Act of 1934." Approved, June 19, 1934.

<sup>108</sup> Paragraphs (d), (f), and (g) added by Public, No. 413, 77th Congress, approved January 26, 1942; 56 Stat. 18.

<sup>109</sup> The present subsection (h) was added by Public Law 200, 82nd Congress, approved October 24, 1951 (65 Stat. 4087).

The former paragraph (h) added by Public, No. 850, 77th Congress, 2d session, approved December 29, 1942; 56 Stat. 1096, providing for certain modifications until 6 months after the war for protection of vessels in wartime, was repealed, effective July 25, 1947, by Joint Res. July 25, 1947, Public, No. 239, 80th Congress, 1st Session, Sec. 1, 61 Stat. 448.

<sup>110</sup> The Communications Act Amendments, 1952, provide that they "shall take effect on the date of their enactment on July 16, 1952, but:

(1) Insofar as the amendments made by this Act to the Communication Act of 1934 provide for procedural changes, requirements imposed by such changes shall not be mandatory as to any agency proceeding (as defined in the Administrative Procedure Act) with respect to which hearings have been commenced prior to the date of enactment of this Act.

(2) The amendments made by this Act to section 402 of the Communications Act of 1934 (relating to judicial review of orders and decisions of the Commission) shall not apply with respect to any action or appeal which is pending before any court on the date of enactment of this Act.

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