

THE COMMISSION'S PROPOSED REVISIONS OF S. 658

A BILL

McCordland 1952

To further amend the Communications Act of 1934.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as "Communications Act Amendments, 1951".

SEC. 2. Subsection (o) of Section 3 of the Communications Act of 1934, as amended, is amended to read as follows:

"(o) 'Broadcasting' means the dissemination of radio communications intended to be received directly by the general public.

SEC. 3. Section 3 of such Act is further amended by adding after sub-section (aa) the following:

"(bb) The term 'license', 'station license', or 'radio station license' means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

"(cc) The term 'broadcast station', 'broadcasting station', or 'radio broadcast station' means a radio station equipped to engage in broadcasting as herein defined.

"(dd) The term 'construction permit' or 'permit for construction' means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act for the installation of apparatus for the transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

SEC. 4 (a). Subsection (b) of Section 4 of such Act, as amended, is amended by striking out the next to the last sentence thereof and inserting in lieu thereof the following:

"Such Commissioner shall not engage in any other business, vocation, profession, or employment, but this shall not apply to the preparation of technical or professional publications for which reasonable honorarium or compensation may be charged."

(b) Subsection (f)(1) of Section 4 of such Act is amended to read as follows:

"Without regard to the civil service laws but subject to the Classification Act of 1949, as amended, (1) the Commission may appoint and prescribe the duties of a secretary, a chief engineer and not more than two assistants, a chief accountant and not more than two assistants, a general counsel and not more than two assistants, chiefs of the functional bureaus established pursuant to Section 5(f) and not more than two assistants for each, and counsel temporarily employed and designated by the Commission for the performance of specific special services; and (2) each Commissioner may appoint and prescribe the duties of a professional assistant and a secretary. The Commission shall have authority, subject to the provisions of the civil service laws and the Classification Act of 1949, as amended, to appoint such other officers, engineers, accountants, attorneys, inspectors, examiners, and other employees as are necessary in the exercise of its functions."

(c) The first sentence of subsection (g) of Section 4 of such Act, as amended, is amended to read as follows:

"(g) The Commission may make such expenditures (including expenditures for rent and personal services at the seat of Government and elsewhere, for office supplies, law books, periodicals, and books of reference, for printing and binding, for land for use as sites for radio monitoring stations and related facilities, including living quarters where necessary in remote areas, for the construction of such stations and facilities, and for the improvement, furnishing, equipping, and repairing of such stations and facilities and of laboratories and other related facilities (including construction of minor subsidiary buildings and structures not exceeding \$25,000 in any one instance) used in connection with technical research activities), as may be necessary for the execution of the functions vested in the Commission and as from time to time may be appropriated for by Congress."

Paragraph (d). Subsection (k) of Section 4 of such Act is amended to read as follows:

"(k) The Commission shall make an annual report to Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such reports shall contain--

"(1) such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of interstate and foreign wire and radio communication and radio transmission of energy.

"(2) such information and data concerning the functioning of the Commission as will be of value to Congress in appraising the amount and character of the work and accomplishments of the Commission and the adequacy of its staff and equipment: Provided, That the first and second annual reports following the date of enactment of Communications Act Amendments, 1951, shall set forth in detail the number and caption of pending applications requesting approval of transfer of control or assignment of a station license, or construction permits for new stations, or for increases in power, or for changes of frequency of existing stations at the beginning and end of the period covered by such reports;

"(3) information with respect to all persons taken into the employment of the Commission during the year covered by the report, including names, pertinent biographical data and experience, Commission positions held and compensation paid, together with the names of those persons who have left the employ of the Commission during such year: Provided, That the first annual report following the date of enactment of Communications Act Amendments, 1951, shall contain such information with respect to all persons in the employ of the Commission at the close of the year for which the report is made;

"(4) an itemized statement of all funds expended during the preceding year by the Commission, of the sources of such funds, and of the authority in this Act or elsewhere under which such expenditures were made; and

"(5) specific recommendations to Congress as to additional legislation which the Commission deems necessary or desirable."

Sec. 5 of the Communications Act of 1934, as amended, is amended to read as follows:

Section 5(a). The Commission is hereby authorized by its order to divide the members thereof into not more than three panels, each to consist of not less than three members. Any commissioner may be assigned to and may serve upon such panel or panels as the Commission may direct, and each panel shall choose its own chairman. In case of a vacancy in any panel, or of absence or inability to serve thereon of any commissioner thereto assigned, the chairman of the Commission or any commissioner designated by him for that purpose may temporarily serve on said panel until the Commission shall otherwise order.

(b) The Commission may by order direct that any of its work business, or functions arising under this Act, or under any other Act of Congress, or in respect of any matter which has been or may be referred to the Commission by Congress or by either branch thereof, be assigned or referred to any of said panels for action thereon, and may by order at any time amend, modify, supplement, or rescind any such direction. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Commission.

(c) In conformity with and subject to the order or orders of the Commission in the premises, each panel so constituted shall have power and authority by a majority thereof to hear and determine, order, certify, report or otherwise act as to any of said work, business, or functions so assigned or referred to it for action by the Commission, and in respect thereof the panel shall have all the jurisdiction and powers now or then conferred by law upon the Commission, and be subject to the same duties and obligations. Any order, decision or report made or other action taken by any of said panels in respect of any matters so assigned or referred to it shall have the same force and effect, and may be made evidenced,

ad enforced in the same manner as if made or taken by the Commission, subject to rehearing by the Commission as provided in Section 405 of this Act for rehearing cases decided by the Commission. The secretary and seal of the Commission shall be the secretary and seal of each panel thereof.

(d) The Commission is hereby authorized by its order to assign or refer any portion of its work, business, or functions arising under this or any other Act of Congress or referred to it, by the Congress, or either branch thereof, to an individual commissioner, or to a board composed of an employee or employees of the Commission to be designated by such order, for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference: Provided, That this authority shall not extend to duties otherwise specifically imposed upon the Commission by this or any other Act of Congress. In case of the absence, or inability for any other reason to act, of any such individual commissioner or employee designated to serve upon any such board, the chairman of the Commission may designate another commissioner or employee, as the case may be, to serve temporarily until the Commission shall otherwise order. In conformity with and subject to the order or orders of the Commission in the premises, any such individual commissioner, or board acting by a majority thereof, shall have power and authority to hear and determine, order, certify, report, or otherwise act as to any of said work, business, or functions so assigned or referred to him or it for action by the Commission and in respect thereof shall have all the jurisdiction and powers now or then conferred by law upon the Commission and be subject to the same duties and obligations. Any order, decision, or report made or other action taken by any such individual commissioner or board in respect of any matters so assigned or referred shall have the same force and effect, and may be made, evidenced, and enforced in the same manner as if made or taken by the Commission. Any party affected by any order, decision, or report of any such individual commissioner or board may file a petition for rehearing by the Commission

or a panel thereof and every such petition shall be passed upon by the Commission or panel thereof. Any action by a panel upon such a petition shall itself be subject to rehearing by the Commission, as provided in section 405 of this Act, and in subsection (c). The Commission may make and amend rules for the conduct of proceedings before such individual commissioner or board and for the rehearing of such action before a panel of the Commission or the Commission. The secretary and seal of the Commission shall be the secretary and seal of such individual commissioner or board.

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

(f) Within twelve months after the enactment of the Communications Act Amendments, 1951, and from time to time thereafter as the Commission may find necessary, the Commission shall organize its staff into (1) integrated bureaus, to function on the basis of the Commission's principal workload operations; and (2) into such other divisional organizations as the Commission may deem necessary to handle that part of its workload which cuts across more than one integrated bureau or which does not lend itself to the integrated bureau set-up. Each such integrated

bureau and divisional organization shall include such legal, engineering, accounting, administrative, clerical and other personnel as the Commission may determine to be necessary to perform its functions. No person engaged directly or indirectly in any prosecutory or investigatory function in any adjudication proceeding or who is subject to the supervision or direction or any person performing or supervising any such prosecutory or investigatory activity shall advise or consult with the Commission with respect to decisions by it after formal hearing in any adjudication as defined in Section 2(d) of the Administrative Procedure Act.

(g) The Commission shall hold, at least once in every three months, a meeting at which times the functioning of the Commission and the handling of its workload shall be reviewed and such orders shall be entered and other action taken as may be necessary or appropriate to expedite the prompt and orderly conduct of the business of the Commission.

(h) Nothing in this section contained, or done pursuant thereto, shall be deemed to divest the Commission of any of its powers.

Sec. 6. Subsection (d) of Section 307 of such Act is amended to read as follows:

(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked or suspended as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses, and not to exceed five years in the case of other licenses, but action of the Commission with reference to the granting of such application for the renewal of a license shall be limited to and governed by the same considerations and practice which affect the granting of original applications. Pending any hearing and final

decision on such an application and the disposition of any petition for rehearing pursuant to Section 405 hereof the Commission shall continue such license in effect.

Sec. 7. So much of subsection (a) of Section 308 of such Act as precedes the second proviso is amended to read as follows: "The Commission may grant instruments of authorization entitling the holders thereof to construct or operate apparatus for the transmission of energy, or communications, or signals by radio or modifications or renewals thereof, only upon written application therefor received by it: Provided, That (1) in cases of emergency found by the Commission involving danger to life or property or due to damage to equipment, or (2) during a national emergency proclaimed by the President or declared by the Congress and during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or security or otherwise in furtherance of the war effort, or (3) in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees in the non-broadcast services or otherwise to follow normal licensing procedure, the Commission may grant and issue authority to construct or operate apparatus for the transmission of energy or communications or signals by radio during the emergency so found by the Commission or during the continuance of any such national emergency or war, in such manner and upon such terms and conditions as the Commission shall by regulation prescribe, and without the filing of a formal application, but no such authority shall be granted for a period beyond the period of the emergency requiring it nor remain effective beyond such period".

Section 8. Section 309(a) of such Act, as amended, is amended to read as follows:

"Sec. 309(a) If upon examination of any application for a station license or for the renewal or modification of a station license the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof

in accordance with said finding. In the event the Commission upon examination any such application does not reach such decision with respect thereto, it shall formally designate the application for hearing and shall notify the applicant of such action and the grounds and reasons therefor, specifying with particularity the matter and things in issue, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe.

Sec. 9. Section 312 of such Act, as amended, is amended to read as follows:

"ADMINISTRATIVE SANCTIONS

"Sec. 312. (a) Any station license may be revoked or suspended for a period not to exceed ninety days, and any 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;

"(5) because the licensee or permittee (or any person controlling, controlled by, or under common control with, such licensee or permittee) has engaged in a course of conduct designed to persuade, induce, or coerce any other licensee or permittee (A) to violate or fail to observe any of the provisions of this Act

or any rule or regulation of the Commission, or (b) to engage in any course of conduct which, under any rule or regulation of the Commission, would warrant the Commission in refusing to grant a license or permit to such other licensee or permittee;

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

"(b) Where any person (1) has failed to operate substantially as set forth in a license, or (2) has violated or has 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.

"(c) Before revoking or suspending a license or revoking a permit pursuant to subsection (a), or issuing a cease and desist order pursuant to subsection (b), the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation or suspension 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 suspension 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 the Commission is authorized pursuant to this section to suspend or revoke a license, or to revoke a permit, or to issue a cease and desist order, the Commission, after the hearing required by subsection (c), or waiver thereof, in lieu of revoking or suspending a license, or revoking a permit, or issuing a cease and desist order, or in addition to issuing a cease and desist order, may order the licensee or permittee to forfeit to the United States the sum of \$500 for each day during which the Commission finds that any offense set forth in the order to show cause issued pursuant to subsection (c) occurred, or such lesser sum as the Commission may find appropriate in the light of all the facts and circumstances of the particular case. Any forfeiture ordered by the Commission under this subsection shall be paid by such permittee or licensee to the Treasury of the United States within thirty days after the public notice of the order of the Commission unless the Commission shall, upon application, extend the time for payment, and, if not so paid, the license or permit shall be deemed revoked and shall be surrendered forthwith unless within such time the licensee shall file a suit in accordance with the provisions of section 402 (a) hereof to enjoin or set aside the order of the Commission. If the order is sustained, the forfeiture, together with interest thereon, shall be paid into the Treasury of the United States within thirty days after public notice of the order of the court unless the Commission shall, upon application, extend the time for payment, and, if not so paid, the license or permit shall be deemed revoked, and shall be surrendered forthwith.

"(e) Any station license granted under the provisions of this Act, or the construction permit required hereby, 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, 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 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."

"(f) 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 burden of proof shall be upon the Commission."

Sec. 10. Section 402 of such Act is amended to read as follows:

"Sec. 402. (a) Suits to enforce, enjoin, set aside, annul, or suspend any order of the Commission under this Act (except those appealable under the provisions of subsection (b) hereof), shall be brought as provided by and in the manner prescribed in Public Law No. 901 (81st Cong., 2nd Sess. (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 Circuit in any of the following cases:

"(1) By any applicant for any instrument of authorization required by this Act, or the regulations of the Commission made pursuant to this Act, for the construction or operation of apparatus for the transmission of energy, or communications, or signals by radio, 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 assign any such instrument of authorization or to transfer control of any corporation holding such instrument of authorization 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 any permittee under said section whose permit has been revoked by the Commission.

"(5) By the holder of any instrument of authorization required by this Act, or the regulations of the Commission made pursuant to this Act, for the construction or operation of apparatus for the transmission of energy, or communications or signals by radio, which instrument has been modified, suspended 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(c) 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 appellant 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 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 it and considered by it in entering said order.

"(e) Within thirty days after the filing of an 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 Act of June 11, 1946 (60 Stat. 243).

"(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.

"(i) The court may, in its discretion, enter judgement 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 as hereinafter provided -

"(l) An appeal may be taken direct to the Supreme Court of the United States in any case wherein the jurisdiction of the court is invoked, or sought to be invoked, for the purpose of reviewing any decision or order entered by the Commission in proceedings instituted by the Commission which have as their object and purpose the revocation of an existing license or any decision or order entered by the Commission in proceedings

which involve the failure or refusal of the Commission to renew an existing license. Such appeal shall be taken by the filing of an application therefor or notice thereof within thirty days after the entry of the judgment sought to be reviewed, and in the event such an appeal is taken the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such an appeal is allowed under such rules as may be prescribed.

"(2) In all other cases, review by the Supreme Court of the United States shall be upon writ of certiorari on petition therefor under Section 240 of the Judicial Code, as amended, by the appellant, by the Commission, or by any interested party intervening in the appeal, or by certification by the court pursuant to the provision of Section 239 of the Judicial Code, as amended."

Sec. 11. The heading of Section 405 of such Act is amended to read as follows:

"REHEARINGS BEFORE COMMISSION"

and such section is amended to read as follows:

"Sec. 405(a) After a decision, order, or requirement has been made by the Commission in any proceedings, any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for rehearing. 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 was not a party to the proceedings resulting in such decision, order, or requirement, or where the party seeking such review 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. The time within which an appeal must be taken under Section 402(b) hereof shall be computed from the date upon which orders are entered 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."

Sec. 12. Section 409 of such Act is amended to read as follows:

"Sec. 409(a) Notwithstanding the provisions of Section 8 of the Administrative Procedure Act of June 11, 1946 (60 Stat. 242), the officer or officers conducting a hearing required by the provisions of this Act or other applicable provisions of law 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.

(b) Notwithstanding the provisions of Section 5 of the Administrative Procedure Act of June 11, 1946 (60 Stat. 239) no officer conducting a hearing pursuant to subsection (a) hereof shall be responsible to or subject to the

supervision or direction of any person engaged in the performance of investigative prosecuting, or other functions of the Commission or any other agency of the Government, but this shall not prevent examiners appointed pursuant to Section 5 of the Administrative Procedure Act from being subject to the supervision of a member or members of the Commission, or a chief examiner for administrative purposes relating to the performance of their duties. No examiner who conducts a hearing shall advise or consult with the Commission with respect to his initial decision or with respect to exceptions taken to his findings, rulings, or recommendations.

Section 12(b). Subsections (b), (c), (d), (e), (f), (g), (h), (i), and (j) of Section 409 of the Act, as amended, are amended to read, subsections (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively.

Section 13. Section 414 of such Act is amended by adding at the end thereof the following: "Except as specially provided in this Act the provisions of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237) shall apply in all proceedings under this Act.

Section 14. Amend chapter 63 of the Criminal Code, title 18, by inserting a new section as follows:

"FRAUD BY RADIO

"Sec. 1343. 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, shall transmit or cause to be transmitted by means of radio communication or interstate wire communication, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, or whoever operating any radio station for which a license is required by any law of the United States, knowingly permits the transmission of any such communication, shall be fined

not more than \$10,000 or imprisoned not more than five years, or both."

Section 15. 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.

My original statement with respect to the McFarland Bill was prepared so that the Commission might have my views on the Bill when the matter was being discussed in my absence. Since that time a further analysis has been prepared by the majority, and I should like, therefore, to comment on this further analysis, especially pages 5 through 10 of the Commission's letter.

The essence of the Commission's analysis is that the McFarland Bill would turn administrative agencies into courts. I do not contend that administrative agencies are courts, because they have many functions in addition to those of courts, such as rule making, which is a quasi-legislative function, rate making, and investigations. However, when the Commission is deciding adversary proceedings, the Commission does now and has for a long time put on witnesses and has had counsel attending the hearings. As a party and as a litigant, the representative of the public interest certainly should have no different standing in an adversary proceeding than the parties that are contending for a license or trying to keep a license from being revoked or trying to get a renewal of license. In that respect, when it is functioning like a court, the administrative agency ought to be bound by similar rules.

I recognize, of course, that members of administrative agencies, like judges, have the need for personal assistance. We have only to point to the expansion of the legal staffs of federal and state judges to indicate that judicial officials, like administrative officials, cannot execute their functions without some assistance. The Circuit Courts of Appeal and the Supreme Court frequently decide complicated and technical questions involving all the administrative agencies without the aid of ex parte advice from experts. The theory that is followed is that the litigants will, in their briefs and argument, supply the courts with the technical information which is needed in connection with the solution of the problems presented in litigation. I emphasize again that this type of procedure would not be appropriate in rule making and other quasi-legislative proceedings, as distinguished from adjudicatory and quasi-judicial proceedings; in such proceedings a more flexible procedure, including extensive ex parte consultation with experts, is often desirable.

Further, I recognize that even in adjudicatory proceedings before an administrative agency, additional personnel such as is provided for by the McFarland Bill is necessary to perform ministerial functions in connection with Commission proceedings. The McFarland Bill expressly provides for a special group responsible directly to the Commission as a whole which would consist of legal, engineering and accounting personnel. Further, I recognize that it is imperative that the public interest be protected in administrative proceedings by the presentation of evidence by the Commission staff. Where I separate from the majority is in my feeling that the staff, whether it be the functional staff or the non-functional staff, should present recommendations in open court so that the adversary parties, whose economic stake in the proceedings is of the highest order, may have an opportunity to answer contentions made by any part of the staff. There is no reason why all expert advice cannot be given in open court. There is no reason why some should refuse

to present their views in open court. But having presented their views in open court, they cannot then appropriately join in the decisional process.

The question boils down to this: Would a system such as is proposed by the McFarland Bill deprive the Commission of substantial assistance of its staff? The majority, on page 7, believes that the McFarland Bill would cut the Commission off "from any substantial assistance by members of the staff". I do not believe this to be the case. I do not believe that behind-the-door consultation with the staff is necessary in order for the Commission to receive substantial assistance. I believe that Administrative agencies in adjudicatory proceedings can operate in accordance with the normal standards of Anglo-American jurisprudence which require open and public proceedings based on open and public records. I cannot believe that administrative agencies must violate these standards of justice in adjudicatory proceedings in order to perform their duties.

In this connection I wish to emphasize that, as the majority points out, the present rules of the Commission provide that examiners may not consult with the members of the staff except in open court. For a long time hearing officers consulted in private with all members of the staff in preparing their recommended decisions. The same argument that the Commission makes now was presented at the time the Commission considered these rules. Some felt examiners could not do their job if that procedure were abandoned. It was argued that examiners need the assistance of the staff in order to decide the cases coming before them. The Commission, however, made the determination that its lawyers, engineers and accountants could supply the examiners with the benefit of their expert knowledge in open court and subject to cross-examination. Arguments made by brief or orally could be answered in open court by the adversary parties. These rules have now been in effect since June 3, 1949, and while the Commission states that this procedure is still in an experimental stage, to my best knowledge there has been no complaint about this procedure and there is no indication that it may be changed. I can see no reason why the examiners who have to make exactly the same kind of quasi-judicial decisions as the Commissioners are required to make should be able to fully perform their functions without behind-the-door staff assistance while the Commissioners should, under exactly the same procedure, be unable to carry out their duties.

There is another aspect of staff participation in the decisional process which should not be overlooked. The Commission operates almost exclusively by what some term "completed staff action". The staff, before it comes to the Commission for instruction, performs all the functions of the Commissioners themselves. It weighs the evidence, decides which witnesses to believe, evaluates the relative importance of the issues or the substance of the issues. This all culminates in written or oral recommendations which the Commission as a whole or individual Commissioners may accept or reject.

To state the problem in another way, in view of the heavy workload of the Commission, there is a tendency to delegate more and more of the Commission's discretionary work to the staff so that in the end the discretion exercised by the Commission is more of form than of substance. This situation

must be viewed in the background of the fact that the area of the Commission's discretion is limited almost exclusively by a number of precedents -- many of which reach diametrically opposite results on seemingly parallel facts. By operating with staff comments or recommendations, the Commission is subjected to precedents that the staff is emphasizing at the moment of the decision rather than those precedents cited at a time when other counsel in a case would have an opportunity to move, plead, or argue. Commission decisions are supposed to be the personal decisions of the Commissioners, based upon the record and arguments publicly made and pleadings or motions publicly filed. Otherwise the United States Senate is not confirming enough employees of the Commission.

The majority's analysis, in my opinion, fails to appreciate the similarities between Commission adjudicatory proceedings and proceedings in courts of law. It attempts to introduce into proceedings which are basically similar to judicial proceedings procedures which are proper only in legislative and quasi-legislative chambers. I do not believe it is a satisfactory answer to state that the Administrative Procedure Act does not require the complete exclusion of quasi-legislative procedures in adjudicatory proceedings. Congress may well not wish to pass legislation describing particular procedures for all administrative agencies, regardless of the nature of their adjudication. What may well be proper for the Veterans Administration when it settles a \$15.00 claim may be completely improper for Communications Commission proceedings involving investments worth millions of dollars. The Administrative Procedure Act, as I understand it, draws the low water mark of standards of fairness and decency applicable to all agencies, no matter what the type of proceedings before them. This low water mark does not, in my opinion, supply a proper procedure for adjudicatory proceedings such as come before the Federal Communications Commission.